

TO file

97-526



95-106-A /J. Stephen Cunat
CC Affirms CBA
(1/9/97 - John Grason Turnbull II, J)

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-2647

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF SHASHI DESAI
20 Highfield Court
Cockeysville, Maryland 21030

FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF
J. STEPHEN CUNAT, M.D. FOR VARIANCE ON
PROPERTY LOCATED ON THE NORTHWEST END OF
HIGHFIELD COURT, 2,342 FT. NORTH OF THE
CENTERLINE OF POT SPRING ROAD (22 HIGHFIELD)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

CIVIL

ACTION

No.3C95010817

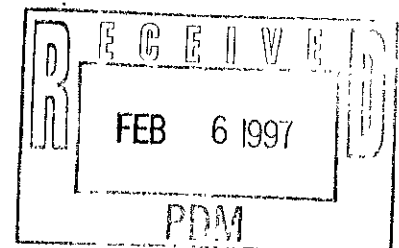
* * * * *

OPINION AND ORDER

Petitioner, Shashi Desai, appeals from the County Board of Appeal's decision to grant a variance to Respondent, J. Steven Cunat. This court heard argument on July 18, 1996, and held the matter sub curia pending a review of the record. Petitioner's issues have been condensed to one narrow issue, rephrased as:

Whether the County Board of Appeals properly granted the variance requested by Cunat to have a setback of zero feet from the property line?

FILED JAN 09 1997



The court has reviewed the testimony, the exhibits and heard argument from the parties and finds that the Board's action was supported by substantial evidence and therefore this court must affirm the decision of the County Board of Appeals.

STATEMENT OF FACTS

The County Board of Appeals for Baltimore County, ("Board"), conducted a hearing on September 19, 1995, on Dr. Cunat's, ("Cunat"), request for a variance. The subject property, 22 Highfield Court, is a residential lot located in the Overlook subdivision, which is made up of lots ranging in size from three to five acres. Cunat's lot is approximately 3.1 acres and is improved by a two-story dwelling with an attached garage and a tennis court.

The rear yard of this lot is densely forested from approximately 20 feet out from the house. At this point, the rear yard slopes down steeply to a stream. On the south side of the house, the property also drops off steeply, which has necessitated the construction of a retaining wall at the base of that drop. Being zoned RC-4, the property is required to have private well and septic. The septic reserve area runs north to south and takes up approximately one-quarter of an acre of the total area of the lot.

Until August of 1993, this property was owned by the Rubins. After obtaining a building permit in the fall of 1986, the Rubins constructed a tennis court with a surrounding fence on the south side yard of their lot. After completing construction of the tennis court, the Rubins discovered Baltimore County Zoning Regulations, ("B.C.Z.R."), § 400.1 required that accessory structures, such as a tennis court, be placed in the rear yard rather than in a side yard.

The Rubins, therefore, filed a Petition for Zoning Variance, requesting a variance from

§ 400.1, to permit the tennis court to remain in the side yard instead of the required rear yard. In their Petition, the Rubins also requested approval of a side yard setback of fifteen feet, the distance the Rubins believed the tennis court to be from the side yard lot line. It is evident from the Petition that the Rubins placed the tennis court in the side yard because the topography of the lot prohibited placement of the tennis court in the rear lot and because the septic reserve area, the grade and the retaining wall prohibited placement of the tennis court closer to the house. Various letters were submitted in support of the Rubins' request for this variance, including one from Desai in which he states he is aware of the location of the tennis court and has no objection to the existence of the tennis court. On January 21, 1987, the Zoning Commissioner for Baltimore County, ("Commissioner"), granted the variance requested by the Rubins with the condition that the fence surrounding the tennis court be located no closer than fifteen feet from the south property line.

After the Commissioner granted the variance, the Rubins received a survey of their property, which indicated that the fence surrounding the tennis court was actually five feet, not fifteen feet, from the south property line. To correct the problem, the Rubins filed a Petition for Special Hearing, requesting that the Commissioner remove the restriction placed on the variance that the tennis court and its surrounding fence be no closer than fifteen feet from the south property line and that the Commissioner permit the tennis court to remain in its present location. A hearing was held on the special hearing request, at which Desai appeared to protest the tennis court being located closer than fifteen feet from his property line. On February 25, 1988, the Commissioner granted the Petition for Special Hearing and ordered that the restriction contained be removed in order to allow the tennis court and its surrounding

fence to be closer than fifteen feet to the property line. No specific setback distance was provided in the Commissioner's Order. Desai did not appeal this decision.

Cunat submitted a Contract of Sale on June 3, 1993, to purchase 22 Highfield Court. A survey completed in anticipation of that sale disclosed that the southwest corner of the tennis court and its surrounding fence actually extended two feet over the property line. Attempts were made to purchase a small strip of land from Desai or to purchase an easement in order to remedy the encroachment. Desai refused these offers.

After the purchase of the property, Cunat became aware that the variance did not cure the two and a half foot setback required by B.C.Z.R. § 400.1. To clarify the record Cunat filed the Petition for Zoning Variance at issue in this appeal, requesting a zero foot setback and permitting the tennis court to remain exactly where it has been located since it was constructed in 1986.

STANDARD OF REVIEW

A reviewing court's role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions and to determine if the administrative decision is premised upon an erroneous conclusion of law. United Parcel Service v. People's Counsel, 336 Md. 569, 577, 650 A.2d 226 (1994). The court must decide in each case whether the agency's decision is "in accordance with the law or whether it is arbitrary, illegal or capricious." Moseman v. City Council, 99 Md.App. 258, 262, 636 A.2d 499, cert denied 335 Md. 229, 643 A.2d 383 (1994).

The scope of review is limited to whether a reasonable mind reasonably could have reached the factual conclusion the agency reached." Kade v. Charles Hickey School, 80

Md.App 721, 725, 566 A.2d 148 (1989). The decision of the administrative agency must be affirmed if the factual issues decided were fairly debatable in light of the evidence produced before the agency. Board of County Commissioners v. Holbrook, 314 Md. 210, 218, 550 A.2d 664 (1988). An issue is fairly debatable when there is substantial evidence upon which the administrative decision can be reasonably based, regardless of the presence of conflicting evidence or inferences, regardless of questions of credibility and regardless of whether the administrative body came to a conclusion that the court would not have reached on the same evidence. Moseman v. County Council, 99 Md.App 258, 262-63, 636 A.2d 499 (1994). It is not the function of the reviewing court to substitute its judgment for that of the administrative agency, even on the question of appropriate inferences to be drawn from the evidence. Moseman at 263.

DISCUSSION

The standard for granting a variance is whether strict compliance with the regulations would result in practical difficulty or unreasonable hardship and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare. In regards to area variances we are only concerned that the conditions peculiar to the land in question presented practical difficulties. Cromwell v. Ward, 102 Md.App. 691, 710 (1995). "Zoning matters, . . . depend upon the unique facts and circumstances of a particular location, and must be analyzed individually." Id. (emphasis in original). The court finds it was clear that the evidence in this case was fairly debatable on the issue of practical difficulty.

In determining whether a practical difficulty exists, deserving of a variance, the following criteria should be considered:

1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secure.

McLean v. Soley, 270 Md. 208, 214-15 (1973).

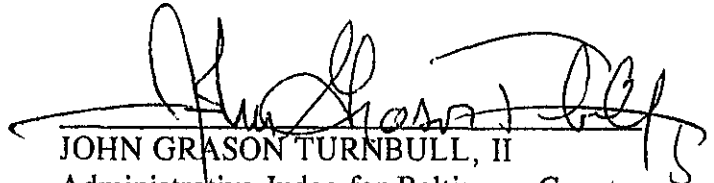
Given the facts of this case, these criteria are met by the evidence. At the hearing, Cunat produced substantial evidence through testimony, expert witnesses and exhibits demonstrating that the lot is subject to unique circumstances, beyond the general characteristics of the neighborhood. The testimony demonstrated that this particular lot was subject to steep slopes, some sloping into a stream, and on the south side of the property, slopes requiring a retaining wall. (T.32,73). Due to the topography of the land and the necessity for private water and sewer the large part of the yard was occupied by the well site and the septic reserve area. (T.76). The only possible location for the tennis court was the side yard. (T.74). While the expert testified that one lot in the development shared some of the characteristics of the Cunat lot, that lot as well as the others had more usable space, as they were not impacted by steep slopes or septic reserve areas. (T.77).

There was substantial evidence submitted to the Board demonstrating that the property

was subject to exceptional topographical conditions. The court has considered all of the evidence in the administrative record. If the decision is fairly debatable, the decision of the Board must be affirmed.

Accordingly, it is this 6th day of January, 1997,

ORDERED, by the Circuit Court for Baltimore County that the decision of the Board of Appeals be AFFIRMED.



JOHN GRASON TURNBULL, II
Administrative Judge for Baltimore County

Copies sent to:

Edward C. Covahey, Jr., Esquire
Counsel for Petitioner

John H. Zinc, Esquire
Patricia A. Malone, Esquire
Counsel for Respondent

RE: PETITION OF SHASHI DESAI
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS FOR BALTIMORE COUNTY

IN THE MATTER OF
THE APPLICATION OF
J. STEPHEN CUNAT FOR
VARIANCE ON PROPERTY LOCATED
ON THE NORTHWEST END OF
HIGHFIELD COURT, 2,342 FT. NORTH
OF THE CENTERLINE OF POT SPRING
ROAD (22 HIGHFIELD COURT)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

IN THE COUNTY BOARD OF APPEALS
CASE NO. 95-106-A

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
* CASE NO. 03-C-95-010817
*
*

* * * * *

**PETITIONER'S MEMORANDUM IN OPPOSITION
TO THE DECISION OF THE
COUNTY BOARD OF APPEALS**

STATEMENT OF THE CASE

This case concerns a Petition for Variance filed by Respondent, Dr. J. Stephen Cunat, to permit a side yard setback of zero (0) feet in lieu of the required 2.5 feet for an existing tennis court on the southeast side of his single family dwelling at 22 Highfield Court, in the subdivision known as Overlook in the Third Councilmanic District. The Petition for Variance was granted by the Zoning Commissioner for Baltimore County on December 21, 1994 (Case No. 95-106-A).

Dr. Shashi Desai, Petitioner herein and neighbor of the Respondent, Dr. Cunat, appealed the Zoning Commissioner's decision and a hearing de novo was held by the County Board of

MICROFILMED

Appeals on September 19, 1995. In an open deliberation session following the close of argument, the Board granted the requested variance. A written Opinion dated October 19, 1995, followed. A Petition for Judicial Review was then timely filed by Dr. Desai.

QUESTIONS PRESENTED

- I. WHERE THE EVIDENCE INDICATED THAT SEVERAL OTHER PROPERTIES IN THE IMMEDIATE VICINITY SHARED SIMILAR TOPOGRAPHIC FEATURES, DID THE BOARD ERR IN FINDING THAT THE CUNAT PROPERTY IS UNIQUE AND UNUSUAL IN A MANNER SUBSTANTIALLY DIFFERENT FROM THE NATURE OF THE SURROUNDING PROPERTIES IN THE SUBDIVISION?
- II. WHERE THE TOPOGRAPHY OF AN OWNER'S PROPERTY CONSTRAINS THE PLACEMENT OF A NON-ESSENTIAL ACCESSORY, SUCH AS A TENNIS COURT, IS THIS A SUFFICIENT BASIS FOR A FINDING THAT THE ZONING PROVISIONS "IMPACT DISPROPORTIONATELY" UPON THAT PROPERTY AND WILL CREATE A PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP SO AS TO JUSTIFY REDUCING THE SIDE YARD SETBACK TO ZERO FEET?
- III. WHERE THE NEED FOR A VARIANCE ARISES OUT OF THE FAILURE OF THE PROPERTY OWNER TO CONSTRUCT A TENNIS COURT IN ACCORDANCE WITH THE PLANS ORIGINALLY SUBMITTED TO THE ZONING COMMISSION, WAS IT ERROR FOR THE BOARD TO FIND THAT ENFORCEMENT OF THE ZONING REGULATIONS WOULD CREATE ANY PRACTICAL DIFFICULTY AND UNREASONABLE HARDSHIP, CAUSED BY THE PROPERTY'S UNIQUENESS?

- IV. WAS THERE SUFFICIENT EVIDENCE BEFORE THE BOARD TO SUPPORT A FINDING THAT THE PHYSICAL CIRCUMSTANCES OF THE PROPERTY PRECLUDED COMPLIANCE WITH THE VARIANCE PREVIOUSLY GRANTED BY THE ZONING COMMISSION?
- V. CAN THE EXPENSE OF MOVING A PORTION OF A TENNIS COURT TO COMPLY WITH A PREVIOUSLY GRANTED VARIANCE, CONSTITUTE A "PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP" WITHIN THE MEANING OF § 307 OF THE BALTIMORE COUNTY ZONING REGULATIONS?

FACTS

The community of Overlook is located at the end of Pot Spring Road in the northcentral part of Baltimore County. It consists of spacious homes situated on lots ranging in size from three to five acres. Highfield Court is a panhandle drive within the community, and services eight lots. The area is zoned RC-4, and backs up against the Loch Raven Watershed.

In 1986, Louis and Joan Ruben, the then-owners of the property at 22 Highfield Court, desired to build a tennis court on their property. As their back yard was wooded and steeply sloped, they applied for a variance to permit the court to be located in the side yard, and also for a side yard setback of fifteen feet in lieu of the required fifty feet. The variance was granted by Zoning Commissioner Arnold Jablon on January 21, 1987, in Case No. 87-307-A.

When the tennis court was built it was located closer to the property line than was permitted by the variance. Dr. Ruben then filed a second petition, Case No. 88-277-A, requesting a variance for a side yard setback of only five feet for the existing tennis court. Dr. Ruben subsequently dismissed this Petition on February 22, 1988, and in a third Petition, Case No. 88-327-SPH, instead sought relief from the fifteen foot setback contained in the variance granted by Mr. Jablon. In an Order dated February 25, 1988, Deputy Zoning Commissioner Ann M. Nastarowicz granted the requested relief to allow the tennis court to be closer to the property line than fifteen feet. No specific distance was stated in the Order. Additionally, the Order required that the site be landscaped in accordance with the Baltimore County Landscape Manual. A line of evergreen trees was subsequently planted to screen the tennis court from the adjacent property to the south, 20 Highfield Court, owned by Dr. Shashi Desai.

In 1993, Dr. Ruben entered into a contract of sale for his property with Dr. Stephen Cunat, the Respondent herein. In the course of surveying the property, it was discovered that not only was the tennis court located closer than the five feet plus or minus depicted in Dr. Ruben's plans submitted to the Zoning Commission as part of the 1988 Petition for Relief (T. 13; Petitioner Exhibit No. 1 in Case No. 88-327-SPH), but in fact one end of the tennis court crossed over the property line

a distance of about 2.6 feet (T.101). The line of trees screening the court encroached an additional several feet into Dr. Desai's property (T.101).

The problem was brought to the attention of Dr. Cunat in July 1993, one month prior to settlement (T.23). Dr. Cunat's real estate agent approached Dr. Desai about the possibility of purchasing a part of his property, but Dr. Desai declined. Dr. Cunat apparently resolved to proceed with settlement, move the fence surrounding the tennis court to coincide exactly with the property line, and seek a variance for a zero foot setback. A credit was given by Dr. Ruben to Dr. Cunat at settlement to compensate for the cost of relocating the fence and removing the portion of the tennis court which encroached upon Dr. Desai's property (T.25-26).

Relations between Dr. Cunat and Dr. Desai were strained from the outset. Dr. Desai was annoyed at the encroachment onto his property, and was concerned about the effect this would have upon any future sale of the property. Moreover, he was offended that Dr. Ruben had not complied with the previous variances, and instead had built across his property line. Dr. Desai's position vis-a-vis Dr. Cunat was simply that the tennis court ought to be brought into compliance with the requirements of the variance as modified by the 1988 Order of the Zoning Commission.

Rather than correct the violation, Dr. Cunat filed the subject Petition for Variance to permit a side yard setback of zero feet in lieu of the required 2.5 feet. It is from the granting of the variance that Dr. Desai has brought this Petition for Judicial Review.

RELEVANT STATUTES AND STANDARD OF REVIEW

The area and minimum setback regulations for the subject property are found in the Baltimore County Zoning Regulations (BCZR), Section 1A03 (R.C. 4 (Watershed Protection Zones). The guidelines on Accessory Buildings in Residence Zones, prohibiting the location of any such structure closer than 2.5 feet from any side or rear lot line, are located in BCZR, Section 400.1. The granting of variances from the zoning requirements is authorized by Section 307.1 of the BCZR.

The applicable standard of judicial review of decisions of the County Board of Appeals is the "fairly debatable" standard. See Red Roof Inns v. People's Counsel, 96 Md. App. 219, 223-24 (1993).

ARGUMENT

- I. SEVERAL OTHER PROPERTIES IN THE VICINITY OF THE CUNAT PROPERTY SHARE SIMILAR TOPOGRAPHIC FEATURES, AND THEREFORE IT WAS ERROR FOR THE BOARD TO FIND THAT THE CUNAT PROPERTY IS UNIQUE, SO AS TO JUSTIFY THE GRANTING OF A VARIANCE.

The decision to grant a variance is essentially a two-step process, the first step of which requires a finding that

the property is "unique and unusual in a manner different from the nature of surrounding properties." Cromwell v. Ward, 102 Md.App. 691, 694 (1995). It is "not the uniqueness or peculiarity of the practical difficulties alleged to exist," but rather the uniqueness of the property itself, that is the threshold question. Id. at 699. Moreover, the variance "should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property." Id. at 719.

The only testimony before the County Board of Appeals concerning the uniqueness of the Cunat property relative to the neighboring lots was presented by David Martin, Director of Land Planning and Landscape Architecture for the firm of G. W. Stephens & Associates. In his testimony, Mr. Martin stated that a number of the properties on the Highfield Court panhandle share similar characteristics. Specifically, Mr. Martin refers to "significant steep slopes . . . which particularly affect this subdivision, Lots 34, 33 (Dr. Cunat's property), 32 and 31." (T.73).

Mr. Martin further stated that:

If you put the two sheets together [the County Review Group Plan] and look at sort of the areas that have environmental impact restrictions based on the requirements of the development regulations back at the time this was prepared, these particular lots -- and, again, Lot 34, 33, 32 and Lot 31, and off of that same panhandle from the other side, there is the panhandle, in essence, runs as a ridge line, around the other side of that

ridge, going downhill this way. Lot 29 -- there's a significant area of steep slopes designated on this C.R.G. Plan. And although the lots are quite large, the amount of usable space on those particular lots has, in fact, been pinched significantly down. (T.75-76)

Mr. Martin then attempts to distinguish the lots on the Highfield Court panhandle, and Lot 33 in particular (Dr. Cunat's property) by stating that there are a total of 46 lots in the community of Overlook (T.78), and that:

When you look at the overall subdivision, there is definitely a difference in these particular lots which I mention versus the rest of the subdivision as it relates to the use of the property, house sizes, driveway location, accessory structures of any kind, there's a difference. (T.76)

It is clear from this testimony that the Cunat property is not truly unique from that of the neighboring lots in the immediate subdivision. The fact that it may be unique from more distant lots in the community of Overlook, if one takes into account all 46 lots rather than just those on the panhandle drive, is not sufficient to meet the requirement that the uniqueness relate to that particular piece of property, and not be shared by neighboring property. Cromwell, Id. at 719. In view of the fact that several of the lots in the immediate vicinity of Dr. Cunat's property shared the same features as his lot, it was error for the County Board of Appeals to find that Dr. Cunat had met his burden of proving the uniqueness of his property, so as to justify the granting of a variance.

II. THE CONSTRAINT OF THE MINIMUM SETBACK REQUIREMENTS WHICH LIMIT HOW CLOSE DR. CUNAT'S TENNIS COURT MAY BE PLACED TO THE NEIGHBORING PROPERTY LINE, IS NOT A SUFFICIENT BASIS FOR A FINDING OF PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP.

In discussing practical difficulty or unreasonable hardship, the Court of Appeals has stated that:

To grant a variance, the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "urgent necessity, hardship peculiar to that particular property"
. . . . Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board.

Kennerly v. Mayor & City Council of Baltimore, 247 Md. 601, 606 -607 (1967) (Citation omitted).

In Cromwell, the Court of Appeals stated that:

A hardship exists only if due to special conditions unique to a particular parcel of land, the ordinance unduly restricts the use . . . the hardship must relate to the special character of the land rather than to the personal circumstances of the landowner.

Cromwell, Id. at 717 (Internal citation omitted).

In this case, the constraint upon the location of a tennis court, or swimming pool, or some other use that might well be considered a luxury rather than a necessity, should not

be the basis for a finding of undue hardship or an unreasonable restriction upon the use of one's property. Minimum setbacks are eminently reasonable for precisely the grounds which have arisen in this case: To prevent interference with or encroachments upon the property of one's neighbors. Essentially, Dr. Cunat in this case desires to have a regulation length tennis court, and alleges that, because of the topography of his property, he should be granted a variance to have the court extend all the way to the neighboring property line, with no setback at all. He argues that the fact that the zoning regulations prohibit him from doing so without a variance constitutes a "practical difficulty and/or unreasonable hardship."

Petitioner Desai argues that, to grant a variance based upon the above facts is to trivialize the meaning of practical difficulty or unreasonable hardship. It would effectively reduce the standard to one where the use allowed "would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner." Kennerly, Id. at 606-607. This position was expressly rejected by the Court of Appeals, which stated that "the Board must find there was proof of 'urgent necessity, hardship peculiar to that particular property.'" Id. Accordingly, Petitioner Desai argues that it was error for the Board to find that the impact of the zoning provisions would result in practical difficulty or unreasonable

hardship to Dr. Cunat (Opinion of County Board of Appeals at P.7), and to grant the variance.

III. THE NEED FOR THE VARIANCE IS DUE TO THE FAILURE OF THE PREVIOUS PROPERTY OWNER TO HAVE THE TENNIS COURT CONSTRUCTED IN THE PROPER LOCATION, WHICH CONSTITUTES A SELF-INFLICTED HARDSHIP AND AS SUCH IS NOT A PROPER GROUND FOR THE GRANT OF A VARIANCE.

The need for the present variance arises from the failure of Dr. Ruben, the previous owner of the subject property, to have the tennis court installed in accordance with the 1987 variance granted by the Zoning Commissioner (Case No. 87-307-A). That variance reduced the setback requirement to 15 feet. As it turned out, the court was built closer than 15 feet to the property line, so Dr. Ruben obtained a modification to the variance to remove the 15 foot restriction, without giving a specific setback distance (Case No. 88-327-SPH). However, relief was granted in accordance with Petitioner's Exhibit 1 in that case, which is a survey showing the tennis court to be located a distance of 5 feet plus or minus from the side property line (T.13). Additionally, the relief was governed by § 400.1 of the Baltimore County Zoning Regulations, which prohibits accessory structures from being located closer than 2.5 feet from a side property line.

Had the tennis court been properly placed according to the first variance, or even according to the subsequent modification in 1988, there would have been no need for the

current proceeding. As counsel for Respondent admits, however, "the problem is that it was built in the wrong place." (T.16) Not only was the tennis court not 5 feet from the line, it in fact encroached over 2.5 feet across Dr. Desai's property line. The tree screen encroached even further. At this point, the issue was no longer one of the constraints of topography and the zoning regulations. Rather it was simply a matter of a failure of the property owner, Dr. Ruben, to put the tennis court where he said he would put it. Any hardship arising out of the enforcement of the zoning regulations in this case is not due to the uniqueness of the characteristics of the property, but is instead a self-inflicted hardship.

Under Maryland law, a self-inflicted hardship cannot be the basis for the grant of a zoning variance. As the Court of Appeals stated in Marino v. Mayor & City Council of Baltimore, "it was incumbent upon the [applicant] to have shown . . . that the hardship was not the result of the applicants' own actions." 215 Md. 206, 218 (1957).

The Court has reaffirmed this position in a number of cases:

The hardship arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief If the Appellees had used proper diligence . . . and then made accurate measurements . . . [the resultant hardship could have been avoided]. The hardship . . . was entirely self-created.

Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 554-555 (1965).

The only hardships facing Ad + Soil were of its own making.

Ad + Soil, Inc. v. County Commissioners, 307 Md. 307, 317 (1986).

We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Cromwell v. Ward, 102 Md.App. 691, 722 (1995).

The Cromwell Court also cited with approval decisions from several other jurisdictions, stating that:

Self-inflicted or self-created hardship . . . is never considered proper grounds for a variance Where the applicant creates a non-conformity, the Board lacks power to grant a variance.

Id. at 722.

The hardship [must] not [be] the result of action taken by the Appellant or a prior owner [W]hen a land owner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

Id. at 717.

Any hardship in this case is the result of Respondent's own actions. Dr. Cunat had notice of the zoning violation prior to purchasing the property from Dr. Ruben. He had the opportunity to insist that the violation be corrected, or that he be compensated for the cost of abating the violation.

itself. In fact, he did receive a credit from Dr. Ruben to cover at least some of the cost of abatement (T.25-26). He has no grounds to claim practical difficulty or unreasonable hardship if the zoning regulations are enforced. The Board was therefore in error to grant the subject variance.

IV. THE EVIDENCE BEFORE THE BOARD INDICATED THAT THE TENNIS COURT COULD HAVE BEEN ORIGINALLY EMPLACED IN COMPLIANCE WITH THE MODIFIED VARIANCE, AND COULD BE ADJUSTED NOW TO COMPLY WITH THE 2.5 FOOT SETBACK; THE BOARD WAS THEREFORE IN ERROR TO GRANT THE VARIANCE.

The Respondent has claimed that "there would be a practical difficulty in relocating [the tennis court] so that it would be 2.5 feet in all directions along [the property line]." (T.40-41) Respondent's expert witness, David Martin, further stated that "to move the fence any further starts to disrupt the regulation play surfaces as well as the maintenance of the court itself, which is a har-tru court with a sprinkler. All these things start to compound themselves." (T.82-83).

The above statements merely point out the obvious. Once any type of structure is emplaced, any modification to bring it into conformity with applicable zoning regulations will create some difficulty. Such was the case in Cromwell v. Ward, supra, where the roof was too high.

In the present case, the testimony of Mr. Martin indicated that in fact the tennis court could be moved the 2.5

feet necessary to bring it into compliance with the minimum setback requirements. When asked by Dr. Desai during cross-examination if he agreed that the tennis court could be moved, Mr. Martin answered "I would agree it can be moved . . . there is physical space to move the tennis court, but it has some ramifications. And without further study against the C.R.G. Plan which recommends a septic reserve area and some other things -- . . ." (T.108) The following exchange then occurred between the Chairman of the Board and Mr. Martin:

The Chairman: . . . To your knowledge, is there a numerical limitation in number of feet that the court could be moved?

The Witness: I don't know what that number is. I have no knowledge of the survey of that detail to tell me how much the tennis court physically can be moved without encroaching into the retaining wall and driveway and all the other stuff. . . .

The Chairman: Would you say it's less than 5 feet?

The Witness: My recollection and visual observation would be it's in that range, 5 feet or less. (T.109-110)

Upon these facts, it is clear that the topography of Dr. Cunat's property does not itself present any difficulty or unreasonable hardship which precludes compliance with the 2.5 foot setback requirements. Mr. Martin testified that there may be up to 5 feet of room on the north end of the tennis court,

nearest Dr. Cunat's house, to extend the surface and compensate for the loss of the section which borders Dr. Desai's property. It was therefore error for the Board to find practical difficulty or unreasonable hardship if the zoning regulations were applied, and grant the variance.

V. THE EXPENSE ALONE OF MOVING A PORTION OF THE TENNIS COURT TO COMPLY WITH THE PREVIOUS VARIANCE DOES NOT CONSTITUTE A "PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP" WITHIN THE MEANING OF § 307 OF THE BALTIMORE COUNTY ZONING REGULATIONS.

Respondent's argument for difficulty and hardship is based primarily upon the cost and inconvenience of abating the violation. Respondent's witness, David Martin, mentions the effect of any move upon the regulation play surfaces and the maintenance of the court (T.82-83). Dr. Cunat also expresses concern about the impact of any move upon the underground sprinkler system (T.33). These difficulties are not caused by the unique characteristics of the property, however. The difficulties are instead caused by the fact that the tennis court was placed in the wrong location, and there is now the inconvenience and cost of abating a zoning violation. This situation will always exist in cases where a structure has been built in violation of the zoning regulations, and an after-the-fact variance is sought.

Under Maryland law, the expense of bringing an existing structure into compliance with zoning regulations is

UNRECORDED

not, by itself, grounds for a variance. In Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 555 (1965), the fact that the Petitioner had already converted a dwelling house into apartment units, and would suffer a financial loss if the requested variance was not granted, did not meet the required showing of practical difficulty or hardship to justify a variance. Furthermore, the Court of Special Appeals unequivocally stated in the Cromwell case:

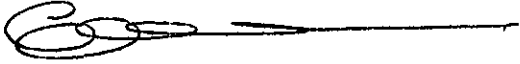
Hardship is not demonstrated by economic loss alone. It must be tied to special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program.

102 Md.App. at 715.

The only hardship or difficulty demonstrated by Respondent in this case was the inconvenience and expense of removing a small portion of the south end of the tennis court, adding a portion at the north end, and adjusting the sprinkler heads at the end of the court. This "hardship" is the inevitable result of the improper placement of the tennis court, and has nothing to do with any unique features of Dr. Cunat's property. It was therefore error for the Board to grant the variance.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that the decision of the Board of Appeals be reversed.



EDWARD C. COVAHEY, JR.
614 Bosley Avenue
Towson, Maryland 21204
(410) 828-9441
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 1996, a copy of the foregoing Petitioner's Memorandum in Opposition to the Decision of the County Board of Appeals was mailed, first class, postage prepaid, to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204; Peter Max Zimmerman, Esq., People's Counsel for Baltimore County, 400 Washington Avenue, Room 47, Towson, Maryland 21204; and John H. Zink, III, Esq. and Patricia A. Malone, Esq., Venable, Baetjer and Howard, LLP, 210 Allegheny Ave., P. O. Box 5517, Towson, Maryland 21204, Attorneys for Respondent, J. Stephen Cunaat.



EDWARD C. COVAHEY, JR.

- a. If it is an accessory structure, it shall be subject to the provisions of Section 400;
 - b. If it is a rigid-structure antenna, it shall be no higher than 100 feet or the horizontal distance to the nearest property line, whichever is less, above grade level, and no supporting structure thereof shall be closer than 50 feet to any property line; and
 - c. It does not extend closer to the street on which the lot fronts than the front building line. [Bill No. 98, 1975.]
15. Farm market, subject to the provisions of Section 404.4. {Bill No. 41, 1992.}
16. Winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on-premises. Temporary promotional events, such as wine tasting or public gatherings associated with the winery, are permitted, within any limits set by the special exception. {Bill No. 51, 1993.}

* [1A03.4 Height and Area Regulations. [Bills No. 98, 1975; No. 178, 1979; No. 113, 1992.]]

- A. Height. No structure hereafter erected in an R.C. 4 zone shall exceed a height of 35 feet, except as otherwise provided under Section 300. [Bill No. 98, 1975.]
- B. Area regulations. [Bills No. 98, 1975; No. 178, 1979; No. 113, 1992.]
 - 1. Lot density. {Bill No. 113, 1992.}
 - a. A tract to be developed in an R.C.4 zone with a gross area of less than 6 acres may not be subdivided, and a tract to be developed with a gross area of at least 6 acres but not more than 10 acres may not be subdivided into more than two lots (total), each of which must be at least three acres, except as otherwise provided in Section 103.3 or in paragraph 4 below. [Bills No. 98, 1975; 178, 1979; 113, 1992.]
 - b. The maximum gross density of a tract to be developed with a gross area of more than 10 acres is 0.2 lot per acre. Any lots created hereafter, except as provided in paragraph 4 below, shall be in accordance with the

following standards for rural cluster development: {Bill No. 113, 1992.}

- (1) A minimum of 70% of the gross area of the tract to be developed shall be designated as the conservancy area. Only one of the permitted dwelling units, including any existing dwellings, may be located in the conservancy area. The conservancy area is subject to the standards contained in Section 1A03.5.
- (2) All of the remaining permitted density shall be located in the building area on lots with a minimum lot size of one acre.
- (3) Subject to the conditions of the performance standards of Section 1A03.5.G, any building or structure officially included on the preliminary or final list of the Landmarks Preservation Commission or the National Register of Historic Areas, and included in the conservancy area, need not be included in the calculation of the total permitted density, subject to the following requirements:
 - (a) There is an area of sufficient size surrounding the building, structure or landmark to preserve the integrity of its historic setting;
 - (b) An overall photographic and written description of the building, structure or landmark identified for preservation has been submitted; and
 - (c) Documentation of the preservation, restoration and protection for the building, structure or landmark has been submitted and approved by the director of planning prior to issuance of any building permit for the development.

*

2. Building setbacks. Except for agricultural buildings, any non-residential principal building hereafter constructed in an R.C.4 zone shall be situated at least 100 feet from the centerline of any street and at least 50 feet from any lot line other than a street line, except as otherwise provided in paragraph 4, below. Any residential principal building shall be set back according to

RECEIVED

the following minimum setback requirements: [Bill No. 98, 1975; Bill No. 113, 1992.]

- a. Twenty-five feet from any building face to a public street right of way or property line;
 - b. Thirty-five feet from a front building face to the edge of paving of a private road;
 - c. Setbacks for buildings located adjacent to arterial roadways shall be increased by 20 feet;
 - d. One hundred feet between a building face and an adjacent R.C.2 zone line;
 - e. One hundred feet between a building face and a reservoir property line; and
 - f. Fifty feet between a building face and an adjacent conservancy area which will be used for agricultural purposes.
3. Coverage. Except for a rural cluster development, which is subject to the performance standards contained in Section 1A03.5, no more than 10% of any lot in an R.C.4 zone may be covered by impermeable surfaces (such as structures or pavement). No more than 25% of the natural vegetation may be removed from any lot in an R.C.4 zone. [Bills No. 98, 1975; 178, 1979; 113, 1992.]
4. Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Office of Planning and Zoning on or before December 22, 1975 and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone, may be approved for residential development in accordance with the standards prescribed and in force at the time of the lot recordation. [Bill No. 98, 1975.]
5. Dwelling units per lot. No more than one dwelling unit shall be located on any lot in an R.C.4 zone, except that tenant dwellings may be approved if the land preservation advisory board certifies that: [Bill No. 113, 1992.]
- a. Any such proposed dwelling is required for the operation of the farm for the use of bonafide tenant farmers; and

ARTICLE 4--SPECIAL REGULATIONS [B.C.Z.R., 1955.]

Section A400--PURPOSE [Bill No. 18, 1976.]

Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations. [Bill No. 40, 1967.]

Section B400--APPLICATION OF THIS ARTICLE'S PROVISIONS
[Bill No. 18, 1976.]

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4C.12) or unless the provision implicitly relates to accessory usage (as in Section 405A). [Bill No. 18, 1976.]

Section 400--ACCESSORY BUILDINGS IN RESIDENCE ZONES. [B.C.Z.R., 1955; Bill No. 27, 1963.]

* [400.1--Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building. [B.C.Z.R., 1955; Bill No. 27, 1963.]

400.2--Accessory buildings, including parking pads, shall be set back not less than 15 feet from the center line of any alley on which the lot abuts. [B.C.Z.R., 1955; Bill No. 2, 1992.]

400.3--The height of accessory buildings, except as noted in Section 300 shall not exceed 15 feet. [B.C.Z.R., 1955.]

Section 307 VARIANCES [B.C.Z.R., 1955; Bill No. 107, 1963.]

* [307.1 The zoning commissioner of Baltimore County and the county board of appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare. They shall have no power to grant any other variances. Before granting any variance, the zoning commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.¹⁶ Any order by the zoning commissioner or the county board of appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance. {B.C.Z.R., 1955; Bill No. 107, 1963; No. 32, 1988; Bill No. 2, 1992.}

307.2 In addition to the authority and limitations set forth in Section 307.1 above, within the Chesapeake Bay critical area, the zoning commissioner, or upon appeal, the board of appeals of Baltimore County, shall have the power to authorize the expansion of those uses in existence at the time of the effective date of this section. Any order granting a variance pursuant to this subsection shall contain findings of fact which shall include the following: [Bill No. 32, 1988.]

1. That special conditions or circumstances exist that are peculiar to the land or structure within the critical area of the county; [Bill No. 32, 1988.]
2. That strict compliance with the critical area regulations would result in practical difficulty, unreasonable hardship, or severe economic hardship; [Bill No. 32, 1988.]

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

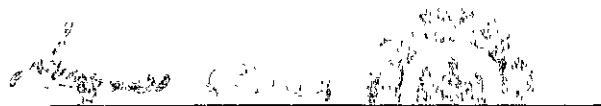
N O T I C E O F A P P E A L

Case Number: 03-C-95-010817
Old Case number:
C I V I L

In The Matter of: Desai

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 19th day of January, 1996.



Suzanne Mensh
Clerk of the Circuit Court, per J.H.

Date issued: 01/23/96

TO: COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
Old Courthouse/Room 49
400 Washington Avenue
Towson, MD 21204

MICROFILMED

92 JAN 23 1996

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF SHASHI DESAI
20 Highfield Court
Cockeysville, Maryland 21030

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 3-C-95-010817

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF J. STEPHEN CUNAT, M.D.
FOR VARIANCE ON PROPERTY LOCATED ON
THE NORTHWEST END OF HIGHFIELD COURT,
2,342 FT. NORTH OF THE CENTERLINE OF
POT SPRING ROAD (22 HIGHFIELD COURT)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-106-A

* * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Robert O. Schuetz, Lawrence M. Stahl, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
OFFICE OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

RECEIVED AND FILED
NO. 95-106-A

96 JAN 19 PM 1:47 1994
September 23, 1994

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

Petition for Administrative Variance filed by G. Page Wingert, Esquire, on behalf of J. Stephen Cunat, M.D. to permit a side yard setback of an accessory structure (tennis court) of 0 feet in lieu of the required 2.5

MICROFILMED

feet and to amend the relief granted in zoning case numbers 87-307-A, 88-277-A and 88-327-SPH.

September 30 Certificate of Posting of property.
(Administrative Variance)

October 13 ZAC Comments.

October 25 Request for Hearing filed by Shashi Desai, M.D.

October 27 Publication in newspapers.

October 30 Certificate of Posting of property. (Public hearing on Petition for Admin. Variance)

November 17 Hearing held on Petition by the Zoning Commissioner.

December 21 Order of the Zoning Commissioner in which Petition for Administrative Variance was GRANTED with a restriction.

January 19, 1995 Notice of Appeal filed by Dr. Shashi Desai.

September 19 Hearing before the Board of Appeals. Deliberation conducted at conclusion of hearing.

October 19 Opinion and Order of the Board in which the Petition for Variance was GRANTED.

November 20 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Edward C. Covahey, Jr., Esquire, on behalf of Shashi Desai.

November 22 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

November 24 Certificate of Notice sent to interested parties.

January 19, 1996 Transcript of testimony filed.

Petitioner's Exhibits No. 1-Subject property site plan
9-9-94 Plat
2-Abbey Fence Contract 8-21-93
3-2 checks 10-3-93-\$660, 8-20-93
#330

MICROFILMED

4A-Photo property in question -10
ft. from fence
4B-Photo closeup of parcel in
question & red status of meets
& bounds
4C-Photo tennis court
4D-Photo Facing NW on property
4E-S towards Dr. Desai's house
4F-Photo NW towards tennis court
4G-Photo SW on property
5A-letter dated 11-15-94 of
approval -Hale
5B-Letter dated 11-15-94 of
approval -Leow
5C-Letter dated 1-15-94 of approval
-Huber
5D-Letter dated 9-14-95 of approval
-Lee
6-Survey of property in question
9-12-95
7A-CRG Subdivision Plan 7-25-83
7B-CRG Subdivision Plan 7-25-83
(pg 2)
8-CRG Subdivision Plan 88-327-SPH
file
9-Case 87-307-A incl. petition from
file
Protestant's Exhibits No. 1-Letter dated 10-27-93 to Desai
from Cunat

January 19, 1996 Record of Proceedings filed in the Circuit
Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered
and upon which said Board acted are hereby forwarded to the Court,
together with exhibits entered into evidence before the Board.

Respectfully submitted,

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals of Baltimore
County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Edward C. Covahey, Jr., Esquire
Shashi Desai, M.D.
Robert A. Hoffman, Esquire
J. Stephen Cunat, M.D.
People's Counsel for Baltimore County

MICROFILMED

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF SHASHI DESAI
20 Highfield Court
Cockeysville, Maryland 21030

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 3-C-95-010817

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF J. STEPHEN CUNAT, M.D.
FOR VARIANCE ON PROPERTY LOCATED ON
THE NORTHWEST END OF HIGHFIELD COURT,
2,342 FT. NORTH OF THE CENTERLINE OF
POT SPRING ROAD (22 HIGHFIELD COURT)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
CASE NO. 95-106-A

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz, Lawrence M. Stahl, and Margaret Worrall, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Edward C. Covahey, Jr., Esquire, 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Petitioner; Shashi Desai, M.D., 20 Highfield Court, Cockeysville, Maryland 21030, Petitioner; J. Stephen Cunat, M.D., 22 Highfield Court, Cockeysville, Maryland 21030; Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204, Counsel for Mr. Cunat; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204; a copy of which Notice is attached hereto and prayed that it

may be made a part hereof.

95 NOV 24 PM 3:17

RECEIVED AND FILED
BALTIMORE COUNTY

MICROFILMED

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Edward C. Covahey, Jr., Esquire, 614 Bosley Avenue, Towson, Maryland 21204, Counsel for Petitioner; Shashi Desai, M.D., 20 Highfield Court, Cockeysville, Maryland 21030, Petitioner; J. Stephen Cunat, M.D., 22 Highfield Court, Cockeysville, Maryland 21030; Robert A. Hoffman, Esquire, 210 Allegheny Avenue, P.O. Box 5517, Towson, Maryland 21204, Counsel for Mr. Cunat; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 24th day of November, 1995.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

RECEIVED
JAN 11 1991

TO: COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
Old Courthouse/Room 49
400 Washington Avenue
Towson, MD 21204

MICROFILMED

RE: PETITION OF SHASHI DESAI
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS FOR BALTIMORE COUNTY

IN THE MATTER OF
THE APPLICATION OF
J. STEPHEN CUNAT FOR
VARIANCE ON PROPERTY LOCATED
ON THE NORTHWEST END OF
HIGHFIELD COURT, 2,342 FT. NORTH
OF THE CENTERLINE OF POT SPRING
ROAD (22 HIGHFIELD COURT)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

IN THE COUNTY BOARD OF APPEALS
CASE NO. 95-106-A

* IN THE
*
* CIRCUIT COURT
*
* FOR
*
* BALTIMORE COUNTY
*
*
* CASE NO.


* # 03-C-95-010817

* * * * *

PETITION FOR JUDICIAL REVIEW

Shashi Desai, Petitioner, by Edward C. Covahey, Jr.,
his attorney, files this Petition for Judicial Review pursuant
to Maryland Rule 7-202, and represents unto this Honorable
Court:

The Petitioner requests judicial review of the Order
of the County Board of Appeals of Baltimore County granting
unto J. Stephen Cunat, M.D., a variance to permit a side yard
setback of 0 feet in lieu of 2.5 feet for an existing tennis
court at 22 Highfield Court. Petitioner was a party to the
Agency proceedings.


EDWARD C. COVAHEY, JR.
614 Bosley Avenue
Towson, Maryland 21204
(410) 828-9441
Attorney for Petitioner

RECEIVED AND FILED
JUN 20 PM 3:21

MICROFILMED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 1995, a copy of the foregoing Petition for Judicial Review was mailed, first class, postage prepaid, to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204, and Robert A. Hoffman, Esq., 210 Allegheny Ave., P. O. Box 5517, Towson, Maryland 21204, Attorney for J. Stephen Cunat.



EDWARD C. COVAHEY, JR.

95-11-30.ldr

RECEIVED
MAY 11 1996



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 24, 1995

Robert A. Hoffman, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-95-010817
J. STEPHEN CUNAT, M.D.

Dear Mr. Hoffman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on November 20, 1995, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-95-010817.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: J. Stephen Cunat, M.D.
People's Counsel for Baltimore County
Pat Keller /Planning
Lawrence E. Schmidt /PDM
Arnold Jablon /PDM
W. Carl Richards /PDM
Docket Clerk /PDM
Virginia W. Barnhart, County Attorney





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

November 24, 1995

Edward C. Covahey, Jr., Esquire
COVAHEY & BOOZER, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-95-010817
J. STEPHEN CUNAT, M.D.

Dear Mr. Covahey:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Shashi Desai, M.D.

MICROFILMED





95-106-A /J. Stephen Cunat
 CCT firms CBA
 (1/9/97 - John Grason Turnbull II, J)

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
 JOHN GRASON TURNBULL, II
 COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
 TOWSON, MARYLAND 21204
 (410) 887-2647

IN THE CIRCUIT COURT
 FOR BALTIMORE COUNTY

PETITION OF SHASHI DESAI
 20 Highfield Court
 Cockeysville, Maryland 21030

FOR JUDICIAL REVIEW OF THE DECISION
 OF THE COUNTY BOARD OF APPEALS
 OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF
 J. STEPHEN CUNAT, M.D. FOR VARIANCE ON
 PROPERTY LOCATED ON THE NORTHWEST END OF
 HIGHFIELD COURT, 2,342 FT. NORTH OF THE
 CENTERLINE OF POT SPRING ROAD (22 HIGHFIELD)
 8TH ELECTION DISTRICT
 3RD COUNCILMANIC DISTRICT

CIVIL

ACTION

No.3C95010817

* * * * *

OPINION AND ORDER

Petitioner, Shashi Desai, appeals from the County Board of Appeal's decision to grant a variance to Respondent, J. Steven Cunat. This court heard argument on July 18, 1996, and held the matter sub curia pending a review of the record. Petitioner's issues have been condensed to one narrow issue, rephrased as:

Whether the County Board of Appeals properly granted the variance requested by Cunat to have a setback of zero feet from the property line?

FILED JAN 09 1997

MICROFILMED

AS (JSC)

The court has reviewed the testimony, the exhibits and heard argument from the parties and finds that the Board's action was supported by substantial evidence and therefore this court must affirm the decision of the County Board of Appeals.

STATEMENT OF FACTS

The County Board of Appeals for Baltimore County, ("Board"), conducted a hearing on September 19, 1995, on Dr. Cunat's, ("Cunat"), request for a variance. The subject property, 22 Highfield Court, is a residential lot located in the Overlook subdivision, which is made up of lots ranging in size from three to five acres. Cunat's lot is approximately 3.1 acres and is improved by a two-story dwelling with an attached garage and a tennis court.

The rear yard of this lot is densely forested from approximately 20 feet out from the house. At this point, the rear yard slopes down steeply to a stream. On the south side of the house, the property also drops off steeply, which has necessitated the construction of a retaining wall at the base of that drop. Being zoned RC-4, the property is required to have private well and septic. The septic reserve area runs north to south and takes up approximately one-quarter of an acre of the total area of the lot.

Until August of 1993, this property was owned by the Rubins. After obtaining a building permit in the fall of 1986, the Rubins constructed a tennis court with a surrounding fence on the south side yard of their lot. After completing construction of the tennis court, the Rubins discovered Baltimore County Zoning Regulations, ("B.C.Z.R."), § 400.1 required that accessory structures, such as a tennis court, be placed in the rear yard rather than in a side yard.

The Rubins, therefore, filed a Petition for Zoning Variance, requesting a variance from

§ 400.1, to permit the tennis court to remain in the side yard instead of the required rear yard. In their Petition, the Rubins also requested approval of a side yard setback of fifteen feet, the distance the Rubins believed the tennis court to be from the side yard lot line. It is evident from the Petition that the Rubins placed the tennis court in the side yard because the topography of the lot prohibited placement of the tennis court in the rear lot and because the septic reserve area, the grade and the retaining wall prohibited placement of the tennis court closer to the house. Various letters were submitted in support of the Rubins' request for this variance, including one from Desai in which he states he is aware of the location of the tennis court and has no objection to the existence of the tennis court. On January 21, 1987, the Zoning Commissioner for Baltimore County, ("Commissioner"), granted the variance requested by the Rubins with the condition that the fence surrounding the tennis court be located no closer than fifteen feet from the south property line.

After the Commissioner granted the variance, the Rubins received a survey of their property, which indicated that the fence surrounding the tennis court was actually five feet, not fifteen feet, from the south property line. To correct the problem, the Rubins filed a Petition for Special Hearing, requesting that the Commissioner remove the restriction placed on the variance that the tennis court and its surrounding fence be no closer than fifteen feet from the south property line and that the Commissioner permit the tennis court to remain in its present location. A hearing was held on the special hearing request, at which Desai appeared to protest the tennis court being located closer than fifteen feet from his property line. On February 25, 1988, the Commissioner granted the Petition for Special Hearing and ordered that the restriction contained be removed in order to allow the tennis court and its surrounding

fence to be closer than fifteen feet to the property line. No specific setback distance was provided in the Commissioner's Order. Desai did not appeal this decision.

Cunat submitted a Contract of Sale on June 3, 1993, to purchase 22 Highfield Court. A survey completed in anticipation of that sale disclosed that the southwest corner of the tennis court and its surrounding fence actually extended two feet over the property line. Attempts were made to purchase a small strip of land from Desai or to purchase an easement in order to remedy the encroachment. Desai refused these offers.

After the purchase of the property, Cunat became aware that the variance did not cure the two and a half foot setback required by B.C.Z.R. § 400.1. To clarify the record Cunat filed the Petition for Zoning Variance at issue in this appeal, requesting a zero foot setback and permitting the tennis court to remain exactly where it has been located since it was constructed in 1986.

STANDARD OF REVIEW

A reviewing court's role is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions and to determine if the administrative decision is premised upon an erroneous conclusion of law. United Parcel Service v. People's Counsel, 336 Md. 569, 577, 650 A.2d 226 (1994). The court must decide in each case whether the agency's decision is "in accordance with the law or whether it is arbitrary, illegal or capricious." Moseman v. City Council, 99 Md.App. 258, 262, 636 A.2d 499, cert denied 335 Md. 229, 643 A.2d 383 (1994).

The scope of review is limited to whether a reasonable mind reasonably could have reached the factual conclusion the agency reached." Kade v. Charles Hickey School, 80

Md.App 721, 725, 566 A.2d 148 (1989). The decision of the administrative agency must be affirmed if the factual issues decided were fairly debatable in light of the evidence produced before the agency. Board of County Commissioners v. Holbrook, 314 Md. 210, 218, 550 A.2d 664 (1988). An issue is fairly debatable when there is substantial evidence upon which the administrative decision can be reasonably based, regardless of the presence of conflicting evidence or inferences, regardless of questions of credibility and regardless of whether the administrative body came to a conclusion that the court would not have reached on the same evidence. Moseman v. County Council, 99 Md.App 258, 262-63, 636 A.2d 499 (1994). It is not the function of the reviewing court to substitute its judgment for that of the administrative agency, even on the question of appropriate inferences to be drawn from the evidence. Moseman at 263.

DISCUSSION

The standard for granting a variance is whether strict compliance with the regulations would result in practical difficulty or unreasonable hardship and that it should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare. In regards to area variances we are only concerned that the conditions peculiar to the land in question presented practical difficulties. Cromwell v. Ward, 102 Md.App. 691, 710 (1995). "Zoning matters, . . . depend upon the unique facts and circumstances of a particular location, and must be analyzed individually." Id. (emphasis in original). The court finds it was clear that the evidence in this case was fairly debatable on the issue of practical difficulty.

In determining whether a practical difficulty exists, deserving of a variance, the following criteria should be considered:

1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secure.

McLean v. Soley, 270 Md. 208, 214-15 (1973).

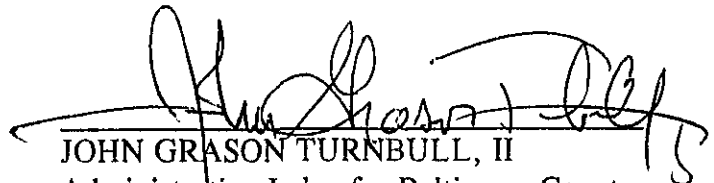
Given the facts of this case, these criteria are met by the evidence. At the hearing, Cunat produced substantial evidence through testimony, expert witnesses and exhibits demonstrating that the lot is subject to unique circumstances, beyond the general characteristics of the neighborhood. The testimony demonstrated that this particular lot was subject to steep slopes, some sloping into a stream, and on the south side of the property, slopes requiring a retaining wall. (T.32,73). Due to the topography of the land and the necessity for private water and sewer the large part of the yard was occupied by the well site and the septic reserve area. (T.76). The only possible location for the tennis court was the side yard. (T.74). While the expert testified that one lot in the development shared some of the characteristics of the Cunat lot, that lot as well as the others had more usable space, as they were not impacted by steep slopes or septic reserve areas. (T.77).

There was substantial evidence submitted to the Board demonstrating that the property

was subject to exceptional topographical conditions. The court has considered all of the evidence in the administrative record. If the decision is fairly debatable, the decision of the Board must be affirmed.

Accordingly, it is this 6th day of January, 1997,

ORDERED, by the Circuit Court for Baltimore County that the decision of the Board of Appeals be AFFIRMED.


JOHN GRASON TURNBULL, II
Administrative Judge for Baltimore County

Copies sent to:

Edward C. Covahey, Jr., Esquire
Counsel for Petitioner

John H. Zinc, Esquire
Patricia A. Malone, Esquire
Counsel for Respondent

IN THE MATTER OF
THE APPLICATION OF
J. STEPHEN CUNAT, M.D.

FOR VARIANCE ON PROPERTY LOCATED
ON THE NORTHWEST END OF HIGHFIELD
COURT, 2,342 FT NORTH OF THE
CENTERLINE OF POT SPRING ROAD
(22 HIGHFIELD COURT)
8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO: 95-106-A

* * * * *

O P I N I O N

J. Stephen Cunat, M.D., filed a Petition for Variance to permit a side yard setback of 0 ft. in lieu of the required 2.5 ft. for an existing tennis court on the southeast side of his single-family dwelling at 22 Highfield Court in the subdivision known as Overlook in the Third Councilmanic District; and to amend Cases 87-307-A, 88-277-A and 88-327-SPH accordingly.

After a hearing before the Zoning Commissioner, who granted the Petition for Variance and the amendment of the aforementioned cases by Order dated December 21, 1994, Protestant and neighbor Dr. Shashi Desai, who lives at 20 Highfield Court, filed a timely appeal.

At a de novo hearing on the appeal, this Board received testimony from the property owner, Dr. Cunat, as well as Registered Landscape Architect, David Martin, and surveyor, Robert P. Henry, both of George W. Stephens, Jr., and Associates, Inc., witnesses for the Petitioner. Robert A. Hoffman represented the Petitioner as legal counsel. Dr. Desai testified as the single Protestant /Appellant and appeared pro se. The Board also received documentary evidence.

MICROFILMED

Section 307.1 of the Baltimore County Zoning Regulations (BCZR) permits the Board of Appeals to grant a variance upon certain terms and conditions which, in pertinent part in this case, allow a variance where special circumstances or conditions exist that are unique to the land or structure which is the subject of the variance requested, and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

Testimony and evidence presented in Petitioner's Exhibit 1 indicate that the subject property consists of 3.105 acres, more or less, zoned R.C. 4, and is improved with a one-story dwelling and a Har-Tru (asphalt) tennis court, which is the subject of this appeal. The property is located on a panhandle drive in the community known as Overlook, which is comprised of substantially-sized houses on lots of 3 to 5 acres.

As shown by testimony and in Petitioner's Exhibits 8 and 9, the subject property has an extensive zoning history with regard to the construction of the tennis court. In Case No. 87-307-A, then Zoning Commissioner Arnold Jablon, on January 21, 1987, granted a variance to permit the tennis court to be located in the side yard in lieu of the required rear yard with a side yard setback of 15 ft. in lieu of the required 50 ft., and a further restriction that no lighting would be permitted for night play on the tennis court. The owners of the property at that time, Louis J. and Joan M.

Case No. 95-106-A /J. Stephen Cunat, M.D. -Petitioner

Rubin, had the tennis courts installed.

Testimony and additional evidence revealed, in fact, that the tennis court was built closer to the property line than permitted by the previously granted variance. A second Petition was subsequently filed in Case No. 88-277-A requesting a variance for a side yard setback of 5 ft. for the existing tennis court. Before this Petition was heard, the case was dismissed by the Petitioner in open hearing on February 22, 1988. A third Petition (Case No. 88-327-A) was then filed seeking relief from the 15-ft. restriction applied by Mr. Jablon. In an Order dated February 25, 1988, then Deputy Zoning Commissioner Ann M. Nastarowicz granted the requested relief to allow the tennis court to be closer to the property line than 15 ft. No specific distance was stated in the order. In addition, the Deputy Zoning Commissioner required that the site be landscaped in accordance with the Baltimore County Landscape Manual.

Dr. Cunat, the Petitioner in the case currently before us, testified that he and his wife purchased the subject property at 22 Highfield Court in August 1993. Before settlement, Cunat was notified by his real estate agent that the existing tennis court had been built crossing the property line between 22 Highfield Court and 20 Highfield Court, the property owned by the Appellant, Dr. Desai. Dr. Cunat further testified that he suggested to Dr. Desai that he would like to purchase either the area of land where

Case No. 95-106-A /J. Stephen Cunat, M.D. -Petitioner

the tennis court encroached or to purchase an easement on that piece of land. Dr. Desai declined that request, and Dr. Cunat then determined to seek the 0 ft. setback variance and to move the chain link fence surrounding the tennis court to coincide with his property line. Dr. Cunat further indicated that he would be willing to remove the remaining surface encroachment from Dr. Desai's property if he were given permission to do so by Dr. Desai.

Settlement on 22 Highfield Court occurred on August 13, 1993, and Abbey Fence Company moved the fence in accordance with the contract dated August 21, 1993 (Petitioner's Exhibit 2). Dr. Cunat further testified that a corner of the asphalt paving, which was previously part of the playing area of the tennis court, remains on Dr. Desai's property.

The Petitioner described the topography of his lot indicating a rear lot with woods 20 ft. from the dwelling, then dropping steeply to a stream. Said limitation was given as the reason that Dr. Rubin had requested the initial variance to build in the side yard when he had the tennis court constructed. In the side yard, the property is constricted, according to testimony by Dr. Cunat, by another steep drop and retaining wall plus the septic field, which prevents the tennis court from being placed closer to his house or west of the dwelling. Further, the tennis court has a sprinkler system installed underground, which would be both difficult and expensive to relocate.

The next witness for the Petitioner was David Martin, Registered Landscape Architect, employed by G. W. Stephens, Jr., and Associates, Inc. Mr. Martin was offered and accepted as an expert on land planning and landscape architecture. Mr. Martin testified that the information contained on Petitioner's Exhibit 1 is accurate, and that the tennis court encroached 2 ft. 8 in. onto Dr. Desai's property. Martin further testified that the fence surrounding the tennis court has been relocated and is now within the property of Dr. Cunat. He further indicated that the subject property is unique within the lots of Overlook in that the open and level area of the rear yard is smaller than most of the others in the subdivision, and that the side yard was the only available space for a tennis court on this particular lot. In addition, it was Mr. Martin's testimony that he believed there would be no adverse impact to the neighborhood from a 0 ft. setback for a tennis court on this lot.

On cross-examination by Dr. Desai, Mr. Martin testified that the fence has been relocated to be in conformance with the 0 ft. setback and that a small "sliver" of the asphalt surface still exists on Dr. Desai's lot. In answer to Dr. Desai's question as to whether the tennis court could be moved to conform with the 2.5 ft. setback required by the regulations under Section 400.1 of the BCZR, Mr. Martin answered that he did not have precise knowledge of how much the court could be moved, but he believed the possibility

Case No. 95-106-A /J. Stephen Cunat, M.D. -Petitioner

existed, although in actuality it would be difficult.

As a witness for the Petitioner, Robert P. Henry, Chief of Surveys for G. W. Stephens, Jr., and Associates, Inc., testified that existing conditions are that the fence is entirely on Dr. Cunat's property and only a portion of the tennis court surface extends beyond the property line.

On his own behalf as Appellant, Dr. Desai testified that he first learned of the encroachment of the tennis court onto his property when Dr. Cunat proposed to purchase the house with tennis court at 22 Highfield Court. Desai testified that he is concerned that the proximity of the tennis court will adversely affect the sale of his property, should he ever choose to sell, although he has no current plans to do so. It was Dr. Desai's testimony that he wished for the tennis court to be moved closer to Dr. Cunat's house so that the fence and the trees which screen the tennis court could be contained within Dr. Cunat's property lines.

On cross-examination by Robert Hoffman, counsel for Petitioner, Dr. Desai testified that he remembered attending the hearing of 1988, but that he did not understand what was going on. Further, he did not know that the tennis court actually encroached on his property until Dr. Cunat purchased 22 Highfield Court in August 1993. He further testified that the tennis playing did not disturb him, but the fact of encroachment onto his property did.

Upon consideration of the testimony and evidence, we find that

Case No. 95-106-A /J. Stephen Cunat, M.D. -Petitioner

there are circumstances peculiar to the subject property which warrant the granting of the variance as requested in accordance with the requirements under BCZR Section 307.1. Given the topography of the lot at 22 Highfield Court and the septic requirements, the placement of the tennis court in the current situation meets the threshold under Cromwell v. Ward, 102 Md.App. 691, 703 (1995), as to the uniqueness of the parcel.

Further, the tennis court was placed under the assumptions which were made based on information brought by professionals at the time of the previous zoning cases as cited. Dr. Cunat purchased the subject property based on the assumption that he would be able to use the property as it was presented with the existing tennis court. Although this fact in no way gives Dr. Cunat the leave to have any part of his tennis court on property not his own, i.e., Dr. Desai's property, strict compliance with the zoning regulations would result in unreasonable hardship and practical difficulty to necessitate the relocation of the tennis court to a setback minimally different from that which would have existed under the previous zoning condition, i.e., less than 15 ft. Moreover, we are persuaded that a setback of 0 ft. in lieu of the required 2.5 ft. will have no adverse impact on Dr. Desai's use of his property, or on that of any other properties in the area.

For the reasons stated above, we will grant the Petition for Variance in accordance with the site plan marked as Petitioner's

RECORDED

Case No. 95-106-A /J. Stephen Cunat, M.D. -Petitioner

Exhibit 1, legitimizing an existing condition and allowing the tennis court and fence to adjoin the property line at 0 ft.

O R D E R

IT IS THEREFORE, this 19th day of October, 1995 by the County Board of Appeals of Baltimore County,

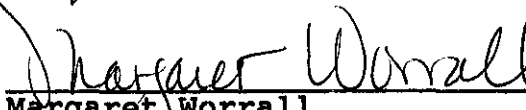
ORDERED that the Petition for Variance to permit a side yard setback of 0 ft. in lieu of 2.5 ft. for an existing tennis court at 22 Highfield Court be and is hereby GRANTED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Robert O. Schuetz, Chairman


Lawrence M. Stahl


Margaret Worrall

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

December 21, 1994

G. Page Wingert, Esquire
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland 21204

RE: PETITION FOR ADMINISTRATIVE VARIANCE
NW/end of Highfield Court, 2,342' N of the c/l of Pot Spring Road
(22 Highfield Court)
8th Election District - 3rd Councilmanic District
J. Stephen Cunat, M.D. - Petitioner
Case No. 95-106-A

Dear Mr. Wingert:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Administrative Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Dr. J. Stephen Cunat
22 Highfield Court, Cockeysville, Md. 21030

Dr. Shashi Desai
20 Highfield Court, Cockeysville, Md. 21030

People's Counsel

File

MICROFILMED





Petition for Administrative Variance

95-106-A

to the Zoning Commissioner of Baltimore County

for the property located at 22 Highfield Court
Cockeysville, Maryland 21030
which is presently zoned RC4

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

400.1 to permit a side yard setback of an accessory structure (tennis court) of 0 feet in lieu of the required 2.5 feet and to amend the relief granted in zoning case numbers 87-307-A, 88-277-A and 88-327-SPH.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

See Reverse Side

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

G. Page Wingert

(Type or Print Name)

Signature G. Page Wingert
Venable, Baetjer & Howard
210 Allegheny Avenue

494-6200

Address Phone No.

Towson, Maryland 21204

State Zipcode

Legal Owner(s):

J. Stephen Cunat, M.D.

(Type or Print Name)

Signature

(Type or Print Name)

Signature

22 Highfield Court 337-1440

Address Phone No.

Cockeysville, Maryland 21030

City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

G. Page Wingert

Name 210 Allegheny Avenue

Towson, Maryland 21204 494-6200

Address

Phone No.

A Public Hearing having been requested and/or found to be required, it is ordered by the Zoning Commissioner of Baltimore County, this ____ day of _____, 19____, that the subject matter of this petition be set for a public hearing, advertised, as required by the Zoning Regulations of Baltimore County, in two newspapers of general circulation throughout Baltimore County, and that the property be reposted.

Zoning Commissioner of Baltimore County

REVIEWED BY: JH

DATE: 9/23

ESTIMATED POSTING DATE: 10-2-94

ITEM #: 111

ORDER RECEIVED FOR FILING

MICROFILMED

Affidavit in support of Administrative Variance

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant(s) and that Affiant(s) is/are competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

That the Affiant(s) does/do presently reside at 22 Highfield Court
address
Cockeysville MD 21030
City State Zip Code

That based upon personal knowledge, the following are the facts upon which I/we base the request for an Administrative Variance at the above address: (indicate hardship or practical difficulty)

This variance request involves the location of an existing tennis court on Petitioner's property, which he purchased in August, 1993. Although the plans and petitions from the prior zoning case (88-327-SPH) involving the location of the tennis court on this property indicated a 5-ft. setback existed, a professional survey undertaken by Petitioner in preparation for settlement on the purchase of the property revealed that the existing fence surrounding the tennis court actually encroached upon the neighbor's property. Upon learning of this encroachment, Petitioner had the fence surrounding the tennis court moved and relocated as close as possible to the tennis court which resulted in a 0-ft. setback for the fence from the property line. Accordingly, Petitioner is requesting the subject variance to allow this 0-ft setback in lieu of the 2.5-ft. setback required for an accessory structure under Section 400.1 BCZR. The Petitioner is faced with a practical difficulty in complying with Section 400.1 BCZR since he cannot increase the setback any more without destroying part of the tennis court. To require the Petitioner to destroy part of the tennis court in order to accommodate the fence would place an unreasonable hardship upon the Petitioner, particularly in light of the fact that the tennis court and fence predate the Petitioner's ownership of the property. For these reasons, the Petitioner respectfully requests your approval of the setback variance sought herein.

That Affiant(s) acknowledge(s) that if a protest is filed, Affiant(s) will be required to pay a reposting and advertising fee and may be required to provide additional information.

J. Stephen Cunat, M.D.
(signature)
J. Stephen Cunat, M.D.
(type or print name)



(signature)

(type or print name)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 22ND day of September, 19 94, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared

J. Stephen Cunat, M.D.

the Affiant(s) herein, personally known or satisfactorily identified to me as such Affiant(s), and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her/their knowledge and belief.

AS WITNESS my hand and Notarial Seal.

date

9/22/94

NOTARY PUBLIC

Regina Shellen

My Commission Expires:

10/15/96

95-106-A

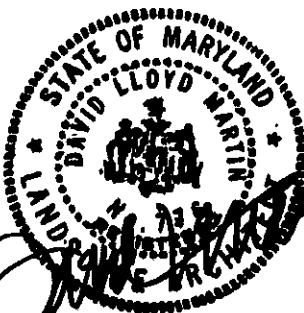
111

ZONING DESCRIPTION

22 Highfield Court
Cockeysville, Maryland 21030
8th Election District

Located on the north end of Highfield Court at a distance of 2342 feet more or less north of the centerline of Pot Spring Road to a point. Thence $S82^{\circ}43'57''W$, 351.4', to a point, thence $N12^{\circ}38'51''W$, 115.01' to a point, thence $N05^{\circ}02'51''W$, 330.0' to a point, thence $S80^{\circ}36'52''E$, 219.6' to a point, thence $S59^{\circ}32'04''E$, 177.51' to a point, thence $S06^{\circ}34'55''E$, 261.73' to a point, thence $S16^{\circ}20'52''E$, 11.12' back to the point of beginning.

Being also known and designated as Lot 33 on "Plat 2 Overlook" which plat is recorded among the Plat Records of Baltimore County in Plat Book EHK, Jr. No. 51, folio 72.



MICROFILM

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

PB-106-1A

District: *8th* Date of Posting: *9/30/94*

Posted for: *Various*

Petitioner: *J. Stephen Gurnat, M.D.*

Location of property: *82 High Field Court, Newland, F.C.T.*

Location of Signs: *Posted at beginning of private drive leading to area of property being zoned.*

Remarks: *(Address & Name added to sign)*

Posted by: *[Signature]* Date of return: *10/7/94*
Signature

Number of Signs: *1*

"MICROFILMED"

CERTIFICATE OF PUBLICATION

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #88-106-A

(Item 111)

22 Highfield Court

NW/4th - Highfield Court,

2342' N of centerline of Pot

Spring Road

8th Election District

3rd Councilmanic

Legal Owner:

J. Stephen Cunat, M.D.

Hearing: Thursday,

November 17, 1994 at

10:00 a.m. in Rm. 118, Old

Courthouse.

Variance to permit a side yard setback of an accessory structure (tennis court) of zero feet in lieu of the required 2.5 feet and to amend the relief granted in zoning case #87-307-A and #88-327-SPH.

LAWRENCE E. SCHMIDT

Zoning Commissioner for

Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.
10/315 Oct. 27.

TOWSON, MD.,

Oct. 28, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Oct. 27, 1994.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-106-17

District: PB4 Date of Posting: 10/30/94

Posted for: Variance

Petitioner: J. Stephen Conot, M.D.

Location of property: 22 Highfield Ct. NW/end

Location of Signs: Facing roadway on property at end of road and
beginning of private road leading to property being zoned

Remarks: _____

Posted by: M. P. [Signature] Date of return: 11/4/94
Signature

Number of Signs: 1



BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

156302

DATE 1/20/95 ACCOUNT R-001-6150

AMOUNT \$ 210.00

RECEIVED FROM: Shashi DESAI

FOR: APPEAL - 95-106-A
22 HIGHLAND COURT

MICROFILMED

03A03#0145MICHRD

\$210.00

BA C011:26AMD1-20-95

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER



Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
95-106-A

Account: R-001-6150

Item Number 111

Taken in by: *[Signature]*

Date 9-25-94

Owner: J.S. CUNAT

Site: 22 Highfield Ct (21030)

010

Residential Variance (1st ADU) - \$ 50.⁰⁰

080

Sign + posting - 35.⁰⁰

Total - \$ 85.⁰⁰

MICROFILMED

01AD100154MICHRC

\$85.00

BA 0010:54AMD9-23-94

Please Make Checks Payable To: Baltimore County

Cashier Validation

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

95-106 A

District 9th

Date of Posting 1/29/95

Posted for: Appeal

Petitioner: L. Stephen Cunniff, M.D.

Location of property: 72 High Field Ct., NW / end

Location of Signs: Facing roadway, on property being appealed
for zoning

Remarks: Sign posted at end of High Field Ct. at driveway leading to property.

Posted by M. Healy
Signature

Date of return: 2/3/95

Number of Signs: 1



REQUEST FOR HEARING

TO THE ZONING COMMISSIONER FOR BALTIMORE COUNTY:

Re: Case Number: 95-106-A
Petitioner(s): J. Stephen CUNAT
Location: 22 Highfield Court

I/WE, SHASHI DESAI
Name(s) ----- (TYPE OR PRINT)

☒ Legal Owners ☐ Residents, of

20 Highfield Court
Address

Cockeysville, MD 21030
City/State/Zip Code Phone

which is located approximately _____ feet from the
property which is the subject of the above petition, do hereby formally
request that a public hearing be set in this matter.

MICROFILMED

Shashi Desai m.d.
Signature Date

Signature Date

PETITION OF: Shashi Desai

CIVIL ACTION # 3-C-95-010817

IN THE MATTER OF J. Stephen Punat,

M.D. - Petitioner 95-106-A

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS

Mary B. Ross
Clerk's Office

Date: 1/19/96

MICROFILMED

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 150250

DATE 10-25-94 ACCOUNT

R001-6150

AMOUNT \$

40 -

RECEIVED
FROM:

Shashi Desai

FOR:

Request Hearing 95-106

0150110025010000

EX-1011-230010-25-94

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

TO: PUTUXENT PUBLISHING COMPANY
October 27, 1994 Issue - Jeffersonian

Please forward billing to:

G. Page Wingert, Esq.
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, Maryland
494-6200

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-106-A (Item 111)

22 Highfield Court

NW/end Highfield Court, 2342' N of centerline of Pot Spring Road

8th Election District - 3rd Councilmanic District

Legal Owner: J. Stephen Cunat, M.D.

HEARING: THURSDAY, NOVEMBER 17, 1994 at 10:00 a.m. in Room 118, Old Courthouse.

Variance to permit a side yard setback of an accessory structure (tennis court) of zero feet in lieu of the required 2.5 feet and to amend the relief granted in zoning case #87-307-A and #88-327-SPH.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

OCTOBER 21, 1994

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-106-A (Item 111)

22 Highfield Court

NW/end Highfield Court, 2342' N of centerline of Pot Spring Road

8th Election District - 3rd Councilmanic District

Legal Owner: J. Stephen Cunat, M.D.

HEARING: THURSDAY, NOVEMBER 17, 1994 at 10:00 a.m. in Room 118, Old Courthouse.

Variance to permit a side yard setback of an accessory structure (tennis court) of zero feet in lieu of the required 2.5 feet and to amend the relief granted in zoning case #87-307-A and #88-327-SPH.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: J. Stephen Cunat, M.D.
G. Page Wingert, Esq.
S. Desai, M.D.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

MICROFILMED



Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

September 30, 1994

NOTICE OF CASE NUMBER ASSIGNMENT

TO: J. Stephen Cumat, M.D.
22 Highfield Court
Cockeysville, Maryland 21030

Re: CASE NUMBER: 95-106-A (Item 111)
22 Highfield Court
NW/end Highfield Court, 2342' N of centerline of Pot Spring Road
8th Election District - 3rd Councilmanic

Please be advised that your Petition for Administrative Zoning Variance has been assigned the above case number. Contact made with this office regarding the status of this case should reference the case number and be directed to 887-3391. This notice also serves as a refresher regarding the administrative process.

- 1) Your property will be posted on or before October 2, 1994. The closing date (October 17, 1994) is the deadline for a neighbor to file a formal request for a public hearing. After the closing date, the file will be reviewed by the Zoning or Deputy Zoning Commissioner. They may (a) grant the requested relief, (b) deny the requested relief, or (c) demand that the matter be set in for a public hearing. You will receive written notification as to whether or not your petition has been granted, denied, or will go to public hearing.
- 2) In cases requiring public hearing (whether due to a neighbor's formal request or by Order of the Commissioner), the property will be reposted and notice of the hearing will appear in a Baltimore County newspaper. Charges related to the reposting and newspaper advertising are payable by the petitioner(s).
- 3) Please be advised that you must return the sign and post to this office. They may be returned after the closing date. Failure to return the sign and post will result in a \$60.00 charge.

PLEASE UNDERSTAND THAT ON THE DATE AFTER THE POSTING PERIOD, THE PROCESS IS NOT COMPLETE. THE FILE MUST GO THROUGH FINAL REVIEW. ORDERS ARE NOT AVAILABLE FOR DISTRIBUTION VIA PICK-UP. WHEN READY, THE ORDER WILL BE FORWARDED TO YOU VIA FIRST CLASS MAIL.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon
Director

cc: G. Page Wingert, Esq.

MICROFILMED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

May 30, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 95-106-A

J. STEPHEN CUNAT, M.D. -Petitioner
NW/end of Highfield Court, 2,342 ft. N of the
c/l of Pot Spring Road (22 Highfield Court)
8th Election District
3rd Councilmanic District

VAR -To permit side yard setback of 0' in lieu
of required 2.5' for existing tennis court;
and to amend 87-307-A, 88-277-A and 88-327-SPH
accordingly.

12/21/94 -Z.C.'s Order in which Petition for
Variance is GRANTED.

ASSIGNED FOR: **TUESDAY, SEPTEMBER 19, 1995 at 10:00 a.m.**

cc: Dr. Shashi Desai Appellant /Protestant.

G. Page Wingert, Esquire Counsel for Petitioner
Dr. J. Stephen Cunat Petitioner

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
Virginia W. Barnhart, County Attorney

Kathleen C. Weidenhammer
Administrative Assistant



Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

OCT. 7 3 1994

J. Stephen Cunat, M.D.
22 Highfield Court
Cockeysville, Maryland 21030

Re: Item 111, Case 95-106

Dear Petitioner:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on September 23, 1994 and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

- 1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.
- 2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.
- 3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,

W. Carl Richards, Jr.
Zoning Supervisor

WCR:jaw



Printed with Soybean Ink
on Recycled Paper

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: September 28, 1994

FROM: Pat Keller, Director
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):
Item Nos. 105, 107, 109 and 111.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by:

Jeffrey W. Long

Division Chief:

Carol L. Kern

PK/JL:lw

RECEIVED
OCT 3 1994

ZADM

ZAC.105/PZONE/ZAC1

MICROFILMED

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

DATE: 10/10/94

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner:

LOCATION: DISTRIBUTION MEETING OF 10/11/94.

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 105, 107, 109, 111
AND 112.

RECEIVED
OCT 11 1994
ZADM

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



Printed on Recycled Paper

RECEIVED

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: ZADM

DATE: 10/6/94

FROM: DEPRM
Development Coordination

SUBJECT: Zoning Advisory Committee
Agenda: 10/3/94

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: 105

107

108

111

112

Case # 95-104

LS:sp

LETTY2/DEPRM/TXTSBP

MICROFILMED

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: October 11, 1994
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Developers Engineering Section

RE: Zoning Advisory Committee Meeting
for October 11, 1994
Items 105, 106, 107, 109 and 111

The Developers Engineering Section has reviewed
the subject zoning items and we have no comments.

RWB:sw

MICROFILMED



*Maryland Department of Transportation
State Highway Administration*

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

9-30-94

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: * 111 (JJS)

Dear Ms. Winiarski:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

for

David Ramsey, Acting Chief
Engineering Access Permits
Division

BS/

My telephone number is _____

MICROFILMED

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

January 20, 1995

G. Page Wingert, Esquire
Venable, Baetjer and Howard
210 Allegheny Avenue
Towson, MD 21204

RE: Petition for Administrative Variance
NW/end of Highfield Court, 2,342 ft.
N of c/l of Pot Spring Road
(22 Highfield Court)
8th Election District
3rd Councilmanic District
J. Stephen Cunat, M.D.-Petitioner
Case No. 95-106-A

Dear Mr. Wingert:

Please be advised that an appeal of the above-referenced case was filed in this office on January 19, 1994 by Dr. Shashi Desai. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3353.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a horizontal line.

ARNOLD JABLON
Director

AJ:jaw

c: People's Counsel

MICROFILMED



APPEAL

Petition for Administrative Variance
NW/end of Highfield Court, 2,342 ft.
N of the c/l of Pot Spring Road
(22 Highfield Court)
8th Election District - 3rd Councilmanic District
J. Stephen Cunat, M.D.-PETITIONER
Case No. 95-106-A

Petition(s) for Administrative Variance

Description of Property

Certificate of Posting

Certificate of Publication

Request for Hearing

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Plat to Accompany Zoning Variance
2 - Three photographs of tennis court and house
3 - Two photographs of tennis court

Letter to C. A. Ruppertsburger from Shashi Desai dated November 15, 1994

Three letters of support

Thirteen photographs of property (not marked as exhibits)

Zoning Commissioner's Order dated December 21, 1994 (Granted)

Notice of Appeal received on January 19, 1994 from Dr. Shashi Desai

c: G. Page Wingert, Esquire, Venable, Baetjer and Howard, 210
Allegheny Avenue, Towson, MD 21204
Dr. J. Stephen Cunat, 22 Highfield Court, Cockeysville, MD 21030
Dr. Shashi Desai, 20 Highfield Court, Cockeysville, MD 21030
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Supervisor
Docket Clerk
Arnold Jablon, Director of ZADM

MICROFILMED

5/30/95 -Notice of Assignment for hearing scheduled for Tuesday,
September 19, 1995 at 10:00 a.m. sent to following:

Dr. Shashi Desai
G. Page Wingert, Esquire
Dr. J. Stephen Cunat
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM
Virginia W. Barnhart, County Attorney

9/19/95 -Hearing held and concluded. Public deliberation followed
conclusion of hearing. Unanimous decision of Board: Petition for
Variance to be GRANTED. Written Opinion and Order to be issued;
appellate period to run from date of written Order.

MICROFILMED

September 23, 1994	Petition for Administrative Variance filed by G. Page Wingert, Esquire, on behalf of J. Stephen Cunat, M.D. to permit a side yard setback of an accessory structure (tennis court) of 0 feet in lieu of the required 2.5 feet and to amend the relief granted in zoning case nos. 87-307-A, 88-277-A and 88-327-SPH.
October 25	Request for Hearing filed by Shashi Desai.
December 21	Order of the Z.C. in which Petition for Administrative Variance was GRANTED w/ R.
January 19, 1995	Notice of Appeal filed by Dr. Shashi Desai.
September 19	Hearing before the Board. Deliberation conducted at conclusion of hearing.
October 19	Opinion and Order of the Board in which the Petition for Variance was GRANTED.
November 20	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Edward C. Covahey, Jr., Esquire, on behalf of Shashi Desai. (copy rec'd by CBA 11/22/95)
November 24	Certificate of Notice sent to interested parties.
January 19, 1996	Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.
January 9, 1997	✓E Opinion and Order issued by the CCt for Balto. Co.; decision of CBA AFFIRMED (John Grason Turnbull II, J)

MICROFILMED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: J. Stephen Cunat, M.D. -Petitioner
Case No. 95-106-A

DATE : September 19, 1995 /at conclusion of hearing

BOARD /PANEL : Robert O. Schuetz (ROS)
Lawrence M. Stahl (LMS)
Margaret Worrall (MW)

SECRETARY : Kathleen C. Weidenhammer
Administrative Assistant

Those present at this deliberation included Robert A. Hoffman, Esquire, on behalf of Petitioner; and Dr. Shashi Desai, Appellant /Protestant.

ROS: The purpose of this portion of the proceeding is to provide deliberation of the matter before the Board. As a preliminary matter, and one which I ordinarily would put on the record, but without having read (each of us) all of the material brought today, we dismissed the court reporter. (Minutes taken by K. Weidenhammer concerning preliminary matter.)

The preliminary matter is when each of us was reviewing the material, one of our Board members discovered a business relationship, not directly with Dr. Cunat but with one of the other physicians in the practice with Dr. Cunat, when that physician was with a different practice 7 years ago. That's pretty farfetched. However, we do have a case where there was a business relationship, just discovered on reading the evidence. The Board members is Ms. Worrall, who, it hit her suddenly when she looked at the letterhead, and saw this particular person's name. It's my recommendation that we disclose it so that, Dr. Desai, so you understand that Margaret has disclosed this to me and I'm disclosing this to you for the record. She has told me that she does not believe that her relationship taints the case simply because it was several years ago. She does not have a relationship with Dr. Cunat or anyone in his firm currently, and therefore believes it's proper for her to sit at this point. Do you have any objection to us going forward as we stand today? If so, I will ask you to voice that objection now. In the absence of same, we will proceed as planned.

Dr. Desai: The relationship is not a continuing relationship?

ROS: No, it is not.

Dr. Desai: Then I have no objection.

ROS: We will then get to the deliberation portion of the proceeding.

MICROFILMED

The Board has before it a rather unusual case as I see it, and I think, before I get into the facts, I would like to talk about the deliberation process. Mr. Hoffman is very familiar with the deliberation process, but it's something which impacts the Board very, very severely in that we have lay people who sit on the Board. We have attorneys who sit on the Board. The risks associated with a Board member who is a practicing attorney and responsibility he shoulders when he takes position on the Board must be taken into consideration when a case is being considered on its merits, as well as doing whatever research is necessary for the proper prosecution of the case on the part of the Board. And this Board has been trying to tow the line or at least establish where that line is as to how far the Board should go in its research effort, in discussing case law as opposed to discussing the merits of the case. I raise that as an issue only because the model that you see before you is a case this Board heard, and the Board sought counsel from its legal counsel as provided under the Charter, in defining a particular word being considered in that case. And so, taking that tact to the next step, what this Board did in chambers this afternoon was, we sat around the table, did not discuss the merits of the case, but each of us looked at the applicable code sections; we looked at exhibits separately for the purpose of at least having them together and being passed from one to another; and so that is where the Board is drawing the line on this matter. What we are doing out here is looking at the objective information which has been provided in the facts and in case law and then doing, as Mr. Stahl indicated earlier, the subjective portion and applying it to case law. With that, I would like to begin.

As Mr. Hoffman so aptly pointed out, this is an unfortunate situation in that Dr. Desai and Dr. Cunat did not create the situation which has resulted in animosity between them. It's unfortunate this animosity is between neighbors and, especially in similar professions where fraternity is the custom. Nonetheless, what is being sought by the Petitioner and successfully obtained below was a variance for side yard setback, and it was on the recommendation of Counsel to seek that relief from 400.1, and it was the Zoning Commissioner's opinion that it was appropriate. The issue before the Board in the case of review of a variance request is outlined in 307.1 of the Baltimore County Zoning Regulations. As well, we have Cromwell v. Ward with which Mr. Hoffman is very familiar but with which you are not, Dr. Desai, and that's why I raise it. Section 307.1 states in pertinent part that the Board has:

"...the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty

or unreasonable hardship...."

The reason I raise the case law is that we have Cromwell v. Ward which is really the first good guidance that the Board has from the upper courts in Maryland to give us some understanding as to which tests come first, and under what circumstances a variance can be granted. Cromwell v. Ward basically tells us that you first have to make a finding of fact that the special circumstances exist peculiar to land or structure. Failing that, we don't have to look at the other tests. But on the assumption that the test has been met, then we look at unreasonable hardship or practical difficulty. The sum of the two must be in the affirmative in order to grant a variance. Therein is the problem with many variance requests. However, in this particular case, I do not think that that is the circumstance. I believe that we do have a circumstance which is peculiar to Dr. Cunat's property. I looked at the CRG plan in particular detail, so as to determine changes in elevation and slope, as well as looked at other Petitioner's exhibits, concerning the plat to accompany variance request, as well as the survey and all of the information provided on those three important documents. In my mind, it seems to be very closely related, and would support the issue of the conditions which are peculiar to that particular site. Then it's a question of strict compliance with the zoning regulations for Baltimore County.

The tennis court was placed under the assumptions which were made based on information brought by professionals at the time of various, let us call it "old history" transactions where none of the parties here was concerned. I would make a finding of fact that Dr. Desai signed a letter, but under false pretenses. He was not aware, was led to believe that, he signed that letter based on information that did make him believe that the tennis court at that time did not reside on his property. And so, as far as I'm concerned, any of the information concerning Dr. Desai's participation does not enter into the case. Nonetheless, we have Dr. Cunat, who paid earnest money in exchange for ownership of real property. And who also made purchase price assumption based on his ability to utilize the property as it has been presented. So from a practical difficulty and unreasonable hardship issue, I think that there is both. Practical difficulty in that to move the tennis court suggested amount of space is something which is likely not to be accomplished, certainly not to be accomplished without a great deal of expense. Unreasonable hardship worst case scenario, Petitioner could possibly lose use of tennis court, and could enter into what may have been equated in purchase price in 1993.

Therefore, I find as a fact that we not only have circumstances which are peculiar to the land, we also have situation where strict compliance with zoning regulations would result in practical difficulty and unreasonable

hardship. Conversely, we have a question as to Dr. Desai's ability to use his lot, which may or may not be impacted by future use of tennis court by Dr. Cunat. And that is why I do not believe that Dr. Desai is negatively impacted at all in this matter. This gentleman has lived with a tennis court for 9 years, which did not bother him until this imaginary line was placed on the property and given some location relative to physical markings on the ground, trees, tennis court, streets, road, other improvements, and I believe that to remove the tennis court so as to just get 2-1/2 feet of buffer between the edge of that tennis court and his property line is of no value to anyone, except for those that would theorize that everything in life is black and white. It just is not so. You have to insert degrees of humanness with what we're doing here. I do not see where Dr. Desai would benefit from the removal of the trees. If he wants them removed, he can remove them. I've heard from the Petitioner that he would be willing to come on to Dr. Desai's property and remove triangular sliver of the tennis court. I do not believe it's within the Board's jurisdiction to require that as a condition; there's question whether or not the Board can add condition, but to provide guidance and dicta which would call for the two of you to get together and equitably make arrangements for any removal of the sliver and other landscaping Dr. Desai would like to see done on his property at your expense; would not hurt anyone. The Board is not results oriented, but this is a situation where Dr. Desai's decision to go along with things in 1986 resulted in a situation with which he has difficulty at this time. That's the other side of humanness.

With that, I would conclude that I would grant the variance relief pursuant to 307.1, and relief from 400.1 of the BCZR. Concerning issue of the special hearing in the alternative, I agree with Counsel that due notice has been provided to the parties who are interested in this particular matter, and that the Board could, as a matter of fact, grant a special hearing in this matter and alter previous decisions. In short, any way you slice it, it seems as though the Petitioner should be successful.

LMS: First of all, I mirror the comments of the Chairman as they relate to the process by which we do all of this in front of you. I am an attorney and member of the panel. I have had, over the course of time, some real difficulty with the process. I've made it a practice to discuss these comments at the beginning of session. I believe it's inappropriate to have fact-finder determining such as the Board is required to do its discussing of the matter only in public. The analogy I draw is I would like to see any upper courts apply same rule to themselves. Has not made it to Annapolis, but sometime it will.

Having said that, I see this issue as two-fold. First, we

have an appeal from a finding of the Zoning Commissioner which brings us to a de novo zoning appeal hearing at which we are being requested to exact relief at the request of one of the parties, to give Dr. Cunat 0' setback. At the same time, is it a special hearing? We are here in a de novo hearing; I think more precisely this is a de novo appeal of zoning request; we are here to apply that zoning request to applicable law and facts of situation. I believe that, and again mirror, the Chairman's comments that this is a conundrum not of your making; yet it must be resolved and the law gives us authority to do that. Zoning variances are not easily given; I believe that based upon all the information and testimony we have heard today, there is an existing condition which is peculiar to this particular parcel of land given structure, height requirements, given septic requirement issues.

Having found that condition is peculiar to this particular piece of land, I then move on as to whether or not relief requested will avoid an unreasonable hardship and practical difficulty. I feel that, given the fact of portion which we are talking about, and that setback request is not very different from that which would have existed under previous zoning condition, that to order the structure of the tennis court changed seems to me to be not only unreasonable but illogical. That to do so would result in unreasonable hardship and that the practical difficulties involved far outweigh the other side of the balance. I agree that we do not have the authority to deal with land use issues, i.e., encroachment. Responsibilities are limited to those which the Council gives us. As a matter of dicta, comment that we make in an opinion which does not have force of finding. This property, Dr. Desai's property, is his property. Dr. Cunat does not have authority to use someone else's property. In dicta, I would underline comments made by Chairman that those adjustments need and should be made. Cannot make that a condition; but does seem natural thing to do. I see no harm, no negative impact on Dr. Desai's property by virtue of reduction to 0'. I feel in the present market and circumstances that it was appropriate on part of the Zoning Commissioner and independent of the decision, I find it appropriate to do so now. I believe that those ameliorative steps as suggested should be made. I believe that a buffer is still a good idea for neighbors; that some adjustment will have to be made by Dr. Cunat.

Within context of zoning and particular strict requirements of what needs to be proven, and the only issue in which we have a way -- that is the zoning variance -- that I find it is perfectly reasonable to allow 0' setback and I find as fact and so rule.

MW: One of the benefits of being the last one is that I believe my colleagues have covered virtually everything that I could add

to this, having reviewed the facts of law and the evidence which was presented today. I simply feel that Dr. Cunat had met the requirements for a variance and would, indeed, experience practical difficulty if he were required to move the tennis court, and also believe he should be granted the variance that has been requested.

Closing by ROS: We are unanimous. There will be a written opinion and order which will come pursuant to these proceedings. Any Petition for Judicial Review should come from that order and the period for that petition for judicial review will run from the date of that order and not necessarily from today's date.

* * * * *

Respectfully submitted,


Kathleen C. Weidenhammer
Administrative Assistant



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

September 20, 1995

Shashi Desai, M.D.
20 Highfield Court
Cockeysville, MD 21030

RE: Case No. 95-106-A
J. Stephen Cunat, M.D. -Petitioner

Dear Dr. Desai:

Pursuant to your request, enclosed is a copy of the Minutes of
Deliberation from the above-entitled matter.

Very truly yours,

A handwritten signature in cursive script, reading "Kathleen C. Weidenhammer".

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure

MICROFILMED



CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

01/13/97

Case Number: 03-C-95-010817 AE
Date Filed: 11/21/95
Status: Open/Active
Previous Case ID:
Reference Number: 95-106-A
Judge Assigned: To Be Assigned,

In The Matter of: Desai

C A S E H I S T O R Y

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title) / Dispo	Entered
PET 001	Desai, Shashi Attorney: 0014822 Covahey, Edward C Covahey & Boozer, PA 614 Bosley Avenue Towson, MD 21204 (410)828-9441	11/21/95
ITP 001	County Board Of Appeals For Baltimore County Old Courthouse/Room 49 400 Washington Avenue Towson, MD 21204	11/21/95
ITP 002	Cunat, J Stephen Attorney: 0015510 Malone, Patricia Ann Venable Baetjer & Howard 210 Allegheny Avenue P O Box 5517 Towson, MD 21204 (410)494-6200 0016339 Zink, John H Venable, Baetjer & Howard, LLP 210 Allegheny Avenue Towson, MD 21204 (410)494-6200	11/21/95

57-106-A-1
MICROFILMED

RWL

0017717 Hoffman, Robert
 Unverified Address
 210 Allegheny Ave
 P O Box 5517
 Towson, MD 21204
 (301)823-4111

CALENDAR EVENTS

Date Time Dur Cer Evnt Jdg L Day Of Rslt By ResultDt Jdg T Notice Rec

07/02/96 09:30A 002 yes CIVI TBA 01 /01

P

JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN

TBA To Be Assigned, J 11/21/95

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Tickle	For	Party	Routed	D Closed	User ID
001000	Petition for Judicial Review The application of J. Stephen Cunat for variance on property located on the northwest end of Highfield Court, 2,342 ft. north of the centerline of Pot Spring Road (22 Highfield Court) 8th Election District, 3rd Councilmanic District; Case #95-106-A (recd 11/20)	11/21/95			TBA	PET001			DA DA
001001	Answer	12/06/95	12/05/95		TBA	ITP002		M 01/17/96	ES KM
002000	certificate of notice	11/27/95	11/24/95		TBA	000			CG CG
003000	Transcript of Record from Adm Agency **	01/23/96	01/19/96		TBA	000			JH JH
004000	Notice - Recpt of Record of Proceedings ** Copies sent.	01/23/96	01/19/96		TBA	000			JH JH
005000	Notice of Appeal Sent	01/23/96	01/23/96		TBA	PET001	01/23/96	M 01/23/96	JH JH
006000	Notice of Appeal Sent	01/23/96	01/23/96		TBA	ITP001	01/23/96	M 01/23/96	JH JH
007000	Notice of Appeal Sent	01/23/96	01/23/96		TBA	ITP002	01/23/96	M 01/23/96	JH JH
008000	Memorandum in opposition to the decision	02/23/96	02/22/96		TBA	PET001			ES ES

MICROFILMED

of the County Board of Appeals, fd.

Num/Seq	Description	Filed	Received	Tickle	For	Party	Routed	D Closed	User ID
009000	Answering memorandum	03/27/96	03/26/96		TBA	ITP002			PH PH
010000	Scheduling Order	05/01/96	05/01/96		TBA	000	05/01/96 M	05/01/96	JD JD
011000	Open Court Proceeding July 18, 1996. Honorable John Grason Turnbull, II. Hearing Had. Opinion and order to be filed.	07/18/96			JGT	000			STB STB
012000	Opinion and Order of Court affirming the decision of the Board of Appeals, etc., fd.	01/09/97			JGT	000		G 01/09/97	AS AS
013000	sent docket entries to Board of Appeals	01/13/97			TBA	000			LC LC

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: ITP 001 County Board Of Appeals For B								
001	BOX 364	0	CBA EXHIBITS					C

DIFFERENTIATED CASE MANAGEMENT
TRACKS AND MILESTONES

Track : N3 Description: CIVIL EXPEDITED TRACK Custom: Yes
Assign Date: 05/01/96 Order Date : 05/01/96
Start Date : 05/01/96 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322	05/16/96			OPEN
Discovery must be completed by	06/20/96			OPEN
All Motions (excluding Motions in Limine	06/30/96			OPEN
Settlement Conference is	07/15/96			OPEN
TRIAL DATE is	07/02/96	07/30/96		OPEN

MICROFILMED

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MD 21285-6754

County Board Of Appeals For Baltimore Assignment Date: 05/01/96
Old Courthouse/Room 49 Case Title: In The Matter of: Desai
400 Washington Avenue Case No: 03-C-95-010817 AE
Towson MD 21204

The above case has been assigned to the CIVIL EXPEDITED TRACK. If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 05/16/96
 2. Discovery must be completed by..... 06/20/96
 3. All Motions (excluding Motions in Limine) are due by..... 06/30/96
 4. Settlement Conference is.....
 5. TRIAL DATE is..... 07/02/96
- Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; APPEAL: 2 HOURS AGREED DATE
(or within 4 court days thereafter)

Honorable Barbara Kerr Howe
County Administrative Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Administrative Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

cc: Edward C Covahey JR
cc: Patricia Ann Malone
cc: John H Zink III
cc: Robert Hoffman
Issue Date 05/01/96

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: February 26, 1997
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*
County Board of Appeals

SUBJECT: Closed File: Case No. 95-106-A
J. Stephen Cunat, M.D.
8th E; 3rd C

As no further appeals have been taken in the upper courts, we have closed the Board's file and are returning same to you herewith. The original file and exhibits were returned to your office by John Almond, Records Manager /Cct, earlier this month.

Attachment (Case File No. 95-106-A)

MICROFILMED

Shashi Desai
20 Highfield Court
Cockeysville, Maryland 21030
Phone: 561 0161
Jan. 19, 1995

Arnold Jablon, Director ZADM
Baltimore County Zoning Department
111 West Chesapeake Avenue
Room 109
Towson, Maryland 21204

RE: Appeal to Variance Decision dated 12/21/94
Case No. 95-106-A

Dear Mr. Jablon:

Please enter an appeal to decision by Lawrence E. Schmidt,
Zoning Commissioner for Baltimore County # 95-106-A dated
December 21, 1994.

Very Truly Yours,
Shashi Desai, M.D.
Shashi Desai 1.19.95

SD:hd

c.c.

RECEIVED
JAN 19 1995

ZADM

MICROFILMED

S. DESAI MD.
20 Highfield Ct.
Cockeysville, MD 21030

10/17/94

Zoning Commissioner
Zoning Department:

Sub: 22 Highfield Ct.
95-106-A.

Dear Sir:

I have to submit that the above property doesn't have ~~sign~~ zoning sign as of Sunday Oct. 16, 1994.

This property has already been encroached upon as per accompanying plat drawn by J. Finley Hanson & Associates.

yours truly
Shashi Desai
20 Highfield Ct.
21030

MR.
DESAI
666-2450H
561-0161-W

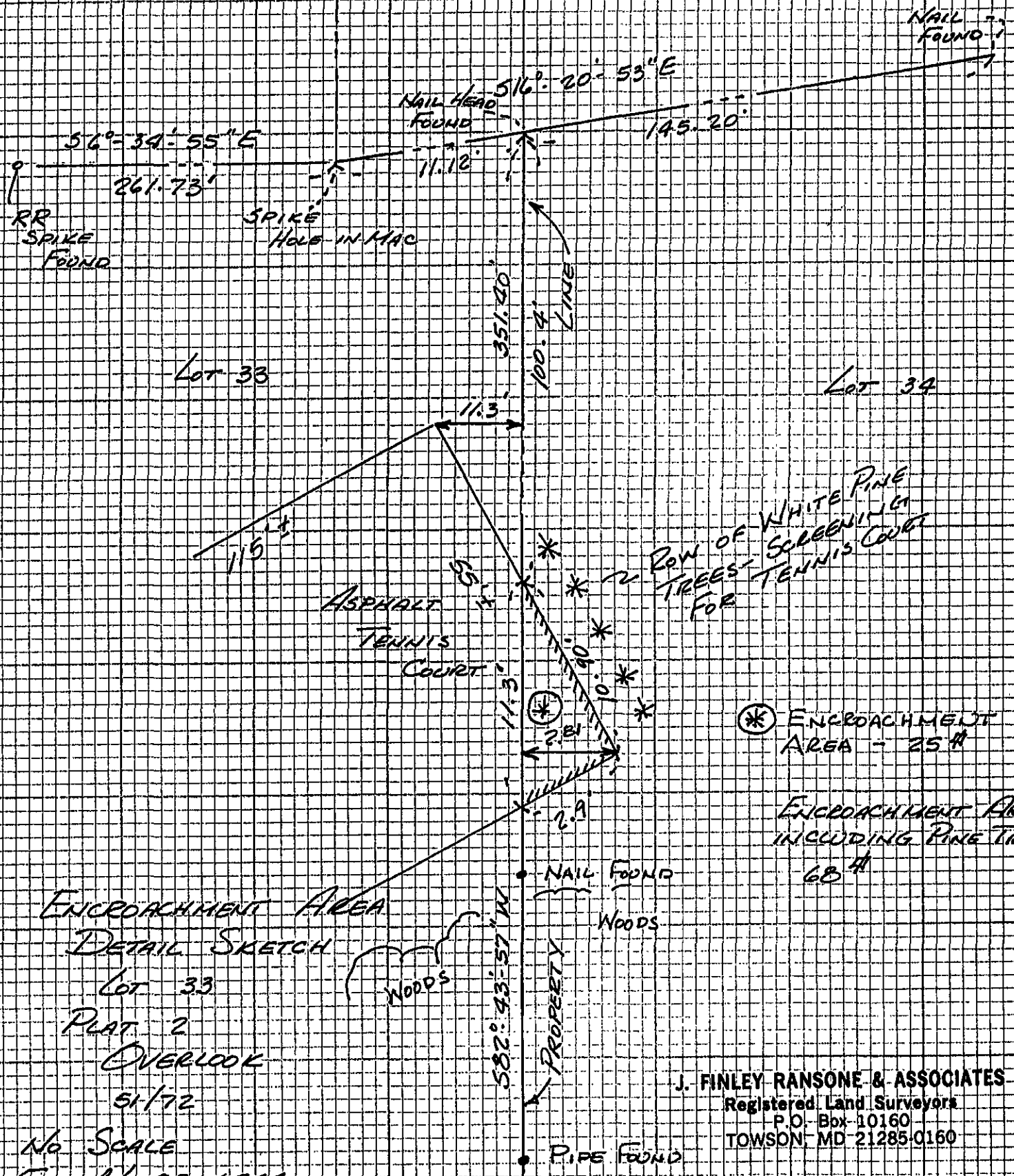
MICROFILMED

MR. DEBIS Plat

Rec'd 10-17-94
with his letter

Lot 28

Lot 27



Lot 34

Lot 33

ENCROACHMENT AREA
DETAIL SKETCH
LOT 33

PLAT 2
OVERLOOK
5/1/72

NO SCALE
FILE NO BB-L244

J. FINLEY RANSONE & ASSOCIATES
Registered Land Surveyors
P.O. Box 10160
TOWSON, MD 21285-0160

Shashi Desai, M.D.
20 HIGHFIELD COURT
COCKEYSVILLE, MARYLAND 21030
TELEPHONE 666-2450

95-106

November 15, 1994

C.A. Ruppertsburger, County Council Executive Elect
400 Washington Avenue
Towson, Maryland 21204

RE: Zoning Variance Hearing for Tennis Court at
22 Highfield Court.

Honorable Mr. Ruppertsburger:

In 1987 Rubins were given 15 feet side yard set back instead of then required 50 feet. I attended that hearing because the notice was posted at the property.

I understand now that in 1988 there was a hearing without any posting at all on this property. I also understand that the zoning gave 2.5 feet side yard setback in 1988 without my attending it, because I did not know of this hearing. There was no posting of this hearing and I did not know of it.

On this thursday there is going to be a zoning hearing for giving this property a zero side yard setback. Before the zoning takes up any further deliberations on this Tennis Court, it needs to look at

1. The Tennis court is in my property per enclosed copy of a survey done by current owner of 22 Highfield Court, J. Stephen Cunat, himself. This survey shows that the tennis court is in my property and they need to remove it.
2. I also enclose a copy of the letter I received after I tried neighbourliness with the new owner in October 1993. He clearly writes to me " I have contacted a landscaper who will be coming out to remove that portion of the Tennis Court playing surface that extends underneath the fence onto your property. There is no mention of the trees that are in my property. None of these things are done on this property.

More over why give any further concessions to a property owner who has not come in to compliance after two different variances given to him.

Sincerely,
Shashi Desai, M.D.
Shashi Desai, M.D.

✓ c.c. Zonnig Department

MICROFILMED

DRS. DECARLO, LYON, HEARN, & PAZOUREK, P.A.

Lawrence J. Pazourek, M.D.
David McNeely, M.D.
Christopher Feifarek, M.D.
Douglas R. Brunner, M.D.
J. Stephen Cunat, M.D.
J. Thayer Simmons, M.D.
J. Dave Faison, M.D.
Rachel F. Brem, M.D.

JOHN DECARLO, JR., M.D.
(Retired July 31, 1987)

JAMES A. LYON, JR., M.D.
1924-1985

JOHN B. HEARN, M.B.
(Retired November 30, 1991)

October 27, 1993

Shashi Desai, M.D.
20 Highfield Court
Cockeysville, Maryland 21030

Dear Dr. Desai,

I received a call from Ms. Janet Lages, the attorney with Greater Maryland Title Group, regarding your phone conversation with her last week. She indicated that you expressed concern regarding the tennis court boundary with respect to the property line between our houses.

My wife and I just moved into the home at 22 Highfield Court last month, following our honeymoon. Prior to settlement, several surveys were performed to delineate the precise property lines. The fence along the edge of the tennis court has already been moved and is now within the property line. This has been verified by another survey. I have contacted a landscaper who will be coming out to remove that portion of the tennis court playing surface that extends underneath the fence onto your property. This area will be resodded. *wrong not done 11/15/94*

I trust this will be satisfactory. If you have any questions or comments, perhaps you could contact me directly, rather than Ms. Lages. My home phone number is 666-2842, and I would very happy to discuss anything further with you.

Sincerely,

Steph Cunst, M.D.
Stephen Cunat, M.D.

SC/eg
10/28/93

I called him to ask for surveys but he refused.
S. Desai

MICROFILMED

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

S. DESAI

ADDRESS

20 Highfield ct., 21030



(MICROFILMED)

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Rob Hoffman
DAVID MARTIN
JOHN STEPHEN CUNAT

210 Allegheny Ave 21204
658 KENILWORTH AVE. 21204
22 HIGHFIELD CT, COLLEYSVILLE 21030



Printed with Soybean Ink
on Recycled Paper

MICROFILMED

SUBJECT PROPERTY

R.C.4

J. H. WALKERMAN, II
0063/349

LOT 28

LOT34

LINE

-COMPANY

HIGHFIELD

SCALE

$$I'' = 200' \pm$$

DATE
OF
PHOTOGRAPHY
JANUARY
1986

LOCATION

LOCH RAVEN

RESERVOIR

AREA

MICROFILMED

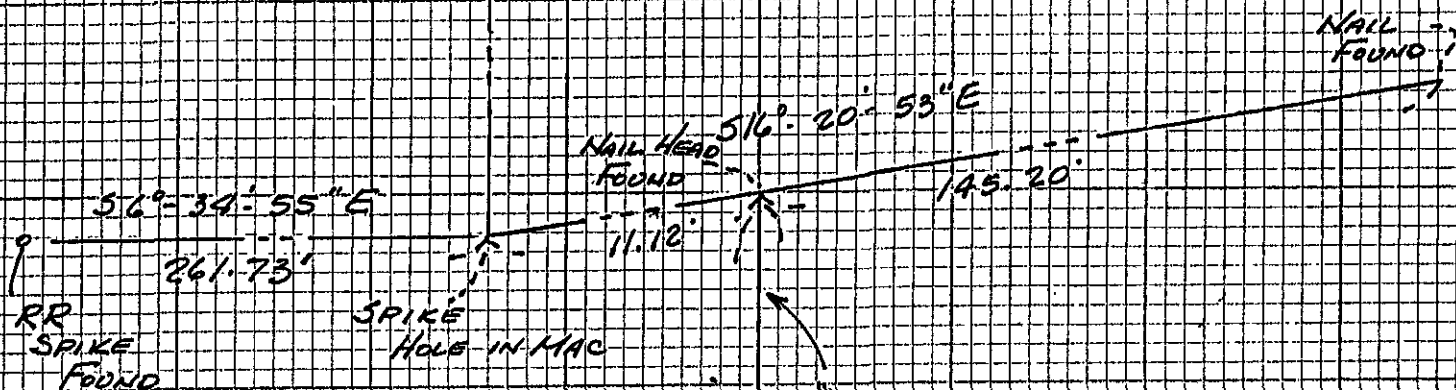
SHEET

N.E.

17-A

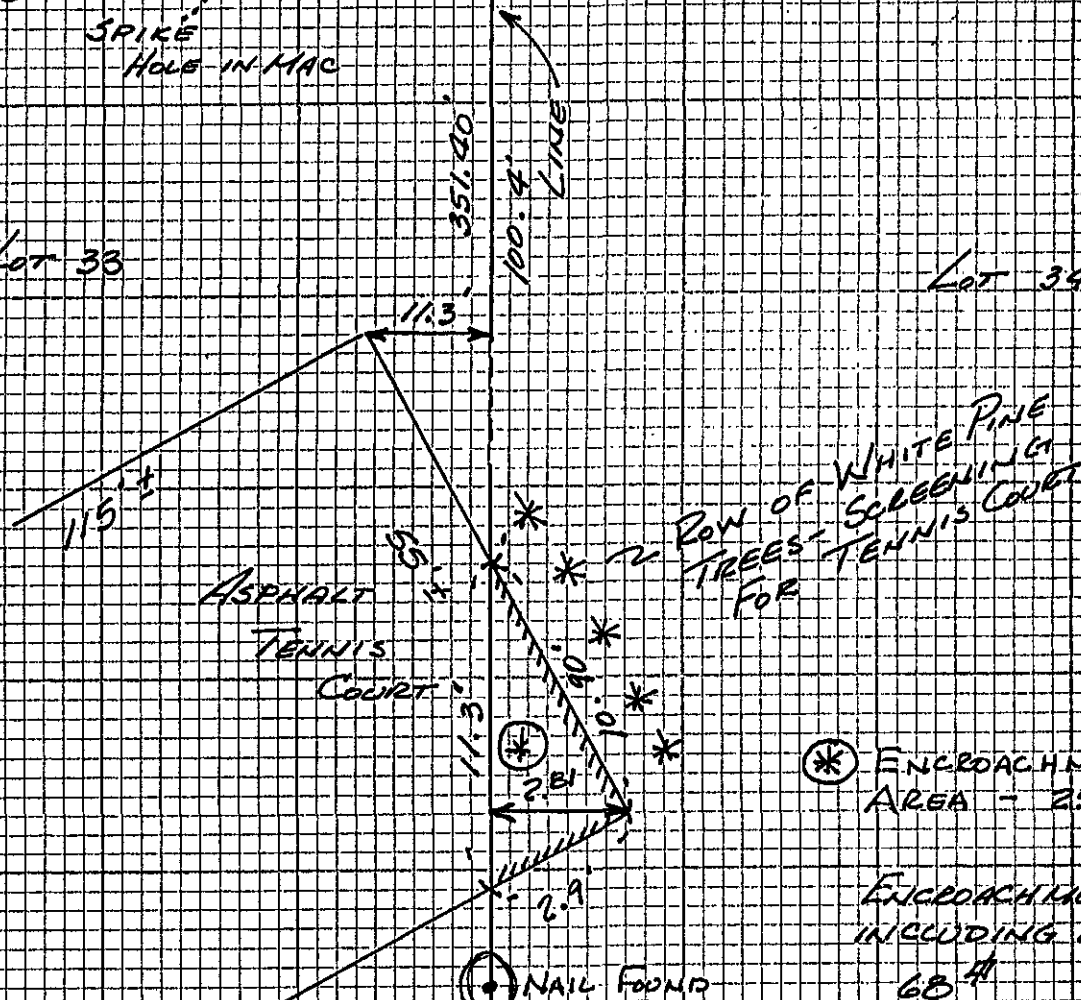
Lot 28

Lot 27



Lot 33

Lot 34



ENCROACHMENT AREA
DETAIL SKETCH

Lot 33

PLAT 2
OVERLOOK

51/72

No SCALE

File No 8B-L244

MICROFILMED

J. FINLEY RANSONE & ASSOCIATES
Registered Land Surveyors
P.O. Box 10160
TOWSON, MD 21285-0160

November 15, 1994

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 95-106-A

Dear Mr. Schmidt:

We have lived in the Overlook neighborhood for a number of years and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

E. L. Hale

let 4A

MICROFILMED

November 15, 1994

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 95-106-A

Dear Mr. Schmidt:

We have lived in the Overlook neighborhood for a number of years and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

Albert J. L...
24 Highfield Ct.
Cockeysville, Md. 21030

Ad 4B

MICROFILMED

November 15, 1994

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 95-106-A

Dear Mr. Schmidt:

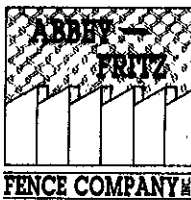
We have lived in the Overlook neighborhood for a number of years and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

Mrs. Jeffrey G. Huber
21 Highfield Court
Cockeysville, Md. 21030

MICROFILMED

Det 4c



Net X2

Balance Due \$ 660.00

SALES AGREEMENT AND CONTRACT
ABBEE FENCE COMPANY, INC.

FRITZ FENCE

A DIVISION OF ABBEE FENCE COMPANY, INC.
H.I.L. #522

Balto Metro Area / A.A. Co. / Harf. Co.

358-7575 766-5800 893-1818

4113 AQUARIUM PLACE

BALTIMORE, MARYLAND 21215

OWNER NAME ~~Mr. & Mrs. John / Dr. Cunat~~

JOB ADDRESS Same

ADDRESS 22 Highfield Ct

DATE 1.6.66-2842 Dr. Cunat 337-1440

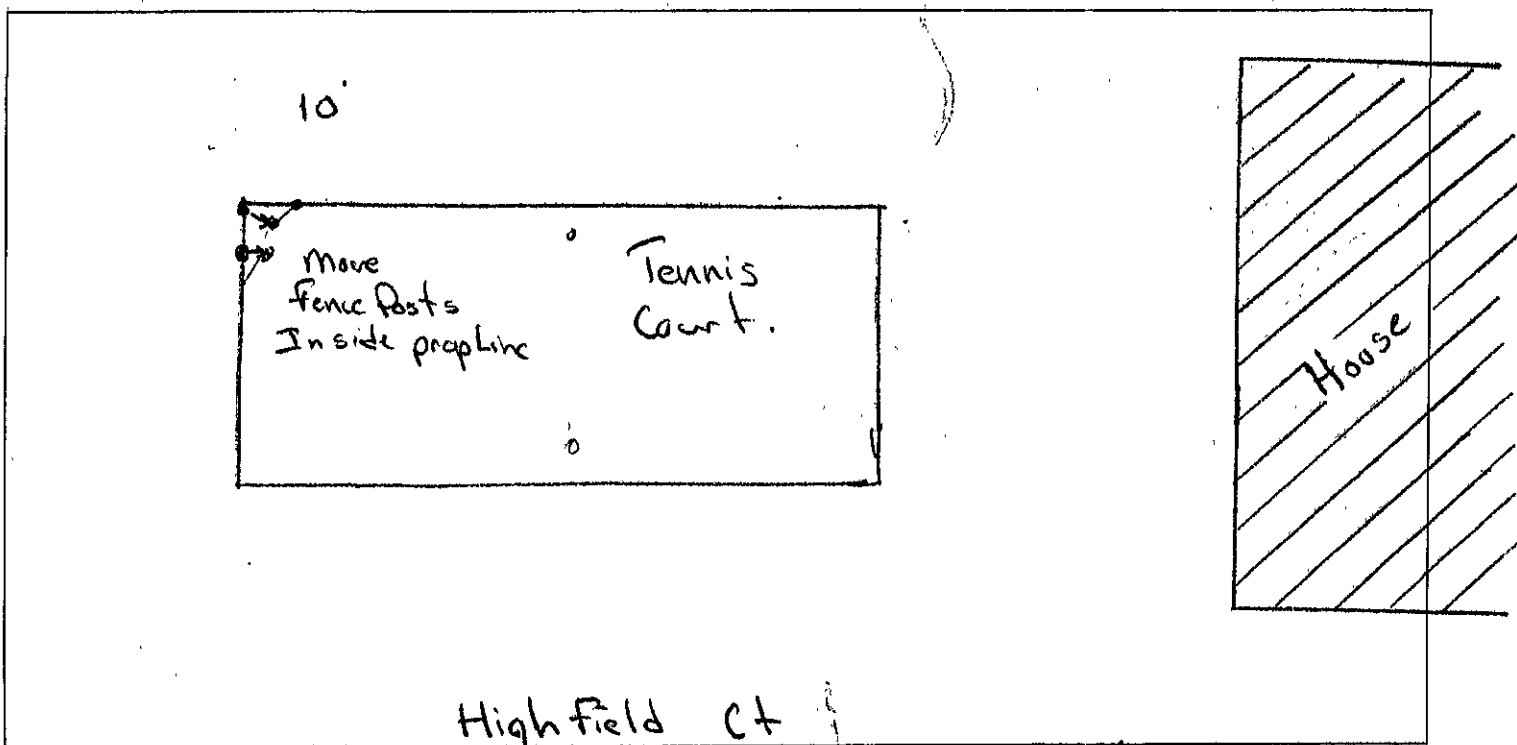
CITY, STATE & ZIP Cockeysville Md 21030

PHONE RES: ~~564-7667~~ OFF: ~~564-0080~~

DIRECTIONS 695 North (2) Delaney Valley Rd (4) Pot Springs Rd
State 7608 to get into Development (4) Highfield Ct.

Work to be Performed by Contractor. Contractor agrees to:

furnish and install the necessary materials to move the
back corner of the Tennis Court fence in onto the property.
One Terminal Post to be placed Approximately 2' inside corner
and one Line Post to be moved in. All work to begin 15.20
work days weather permitting



Call Miss Utilities

☒ Yes

☐ No

Stakes Are In

☐ Yes

☒ No

This sales agreement and contract are subject to the "terms and conditions" stated on the reverse side hereof, and said terms and conditions are incorporated herein by reference.

PRICE. For the above services and/or materials and equipment, the OWNER agrees to pay Abbey Fence Co., Inc. the sum of \$ ~~900~~ 990
said sum payable as follows:

Deposit of 33% or 1/3 is required before work is started or scheduled

Deposit \$ 330

Balance is to paid to the Foreman at the time the job is completed. For additional Billing add 2%

Balance \$ 660

TOTAL

Total \$ 990.00

CHARGE #

Exp. Date:

The undersigned CONTRACTOR and OWNER agree and accept the terms and conditions set forth herein and further agree that this Contract contains the final and entire agreement between the parties hereto and neither they nor their agents shall be bound by any terms, conditions, statements, warranties, or representations, oral or written, not herein contained.

DATE 8/21/93

John Stephen Cunat

OWNER

DATE:

OWNER

Salesman's Lic. No.

Salesman
CONTRACTOR
ABBEE FENCE CO., INC.: FRITZ FENCE

DATE ACCEPTED: BY

This contract is subject to conditions on the reverse side hereof, and is not binding upon Abbey Fence Co., Inc. or Fritz Fence until accepted and approved by an officer of the Company at Baltimore, MD.

MICROFILMED

DRS. DeCARLO, LYON, HEARN, & PAZOUREK, P.A.

Lawrence J. Pazourek, M.D.
David McNeely, M.D.
Christopher Feifarek, M.D.
Douglas R. Brunner, M.D.
J. Stephen Cumat, M.D.
J. Thayer Simmons, M.D.
J. Dave Faison, M.D.
Rachel F. Brem, M.D.

JOHN DeCARLO, JR., M.D.
(Retired July 31, 1987)

JAMES A. LYON, JR., M.D.
1924-1985

JOHN B. HEARN, M.B.
(Retired November 30, 1991)

Appellant #1

October 27, 1993

Shashi Desai, M.D.
20 Highfield Court
Cockeysville, Maryland 21030

Dear Dr. Desai,

I received a call from Ms. Janet Lages, the attorney with Greater Maryland Title Group, regarding your phone conversation with her last week. She indicated that you expressed concern regarding the tennis court boundary with respect to the property line between our houses.

My wife and I just moved into the home at 22 Highfield Court last month, following our honeymoon. Prior to settlement, several surveys were performed to delineate the precise property lines. The fence along the edge of the tennis court has already been moved and is now within the property line. This has been verified by another survey. I have contacted a landscaper who will be coming out to remove that portion of the tennis court playing surface that extends underneath the fence onto your property. This area will be resodded. *→ wrong*

I trust this will be satisfactory. If you have any questions or comments, perhaps you could contact me directly, rather than Ms. Lages. My home phone number is 666-2842, and I would very happy to discuss anything further with you.

Sincerely,

Stephen Cumat, M.D.
Stephen Cumat, M.D.

SC/eg
10/28/93

I called him to ask for surveys but he refused.
S. Desai

O'Dea Medical Arts Bldg.
7505 Osler Drive, Suite 406
Towson, MD 21204
339-7000
Fax 821-7024

St. Joseph Professional Centre
120 Sister Pierre Drive, Suite 104
Towson, MD 21204
339-7000

Perry Hall Professional Center
9712-14 Belair Road, Suite LL2
Baltimore, MD 21236
256-8825
Fax 256-3719

MICROFILMED

Put X3

507

JOHN STEPHEN CUNAT, M.D.
363 OLD TRAIL
BALTIMORE, MD 21212

PAY TO THE ORDER OF Abbey - Fritz Fence Co. \$ 330.00

Three hundred thirty and 00/100 DOLLARS

WOODBROOK OFFICE
MARYLAND NATIONAL BANK
BALTIMORE, MARYLAND 21212

MEMO Deposit - Fence

John Stephen Cunat M.D.

⑈000000000⑈ ⑈5507891000 1050 ⑈891000250⑈

7-160591
520

8/20 19 93

DELUXE WALLET

554

JOHN STEPHEN CUNAT, M.D.
ELLEN WILCOX CUNAT
22 HIGHFIELD COURT
COCKEYSVILLE, MD 21030

PAY TO THE ORDER OF Abbey Fritz Fence Co. \$ 660.00

Six hundred sixty and 00/100 DOLLARS

WOODBROOK OFFICE
MARYLAND NATIONAL BANK
BALTIMORE, MARYLAND 21212

MEMO John Stephen Cunat M.D.

⑈052000168⑈ 0551 0007661055⑈ ⑈0000006000⑈

7-160591
520

10/3 19 93

MICROFILMED

Pet 1 x 5A

November 15, 1994

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 95-106-A

Dear Mr. Schmidt:

We have lived in the Overlook neighborhood for a number of years and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

*E. L. Hale**Pet 4A*

MICROFILMED

Del 4B

November 15, 1994

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 95-106-A

Dear Mr. Schmidt:

We have lived in the Overlook neighborhood for a number of years and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

Albert J. Lin
24 Highfield Ct.
Cockeysville, Md. 21030

Del 4B

MICROFILMED

Pet 5C

November 15, 1994

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 95-106-A

Dear Mr. Schmidt:

We have lived in the Overlook neighborhood for a number of years and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

Mrs. Jeffrey G. Huber
21 Highfield Court
Cockeysville, Md. 21030

Pet 4C

MICROFILMED

September 14, 1995

Petit X 5D

Lawrence E. Schmidt, Zoning Commissioner
400 Washington Avenue
Towson, Maryland 21204

Re: Case no. 95-106-A

Dear Mr. Schmidt:

We live in the Overlook neighborhood and are familiar with the tennis court located at 22 Highfield Court. Dr. Stephen Cunat has met with us to again explain the variance necessary to validate the existing location of the court, and we are in complete support.

Yours truly,

JL
JoAnne Lee

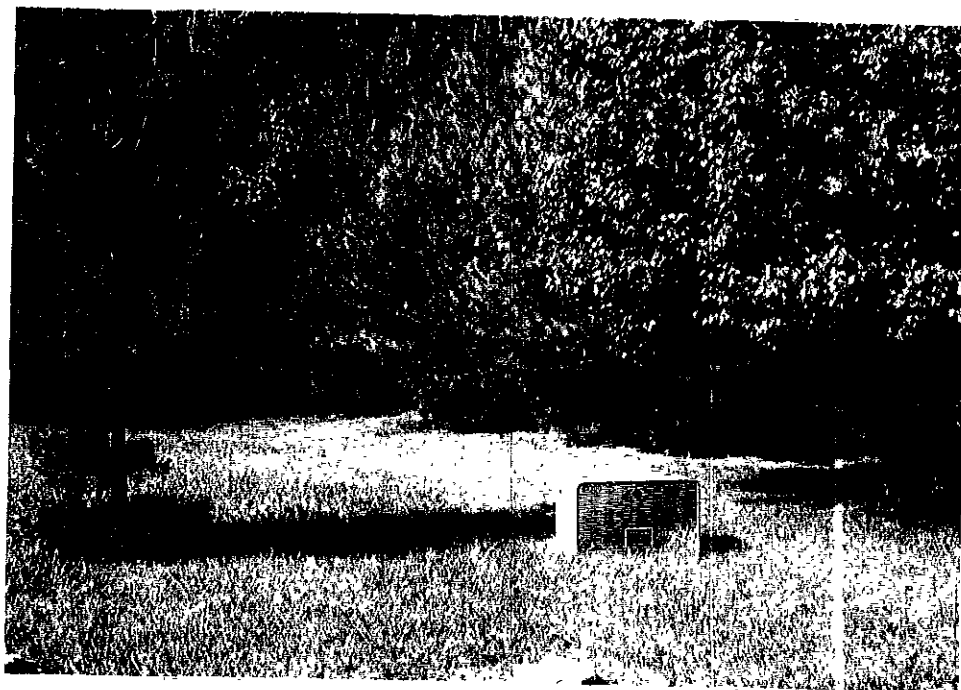
MICROFILMED

95-106-A



MICROFILMED

95-106-A

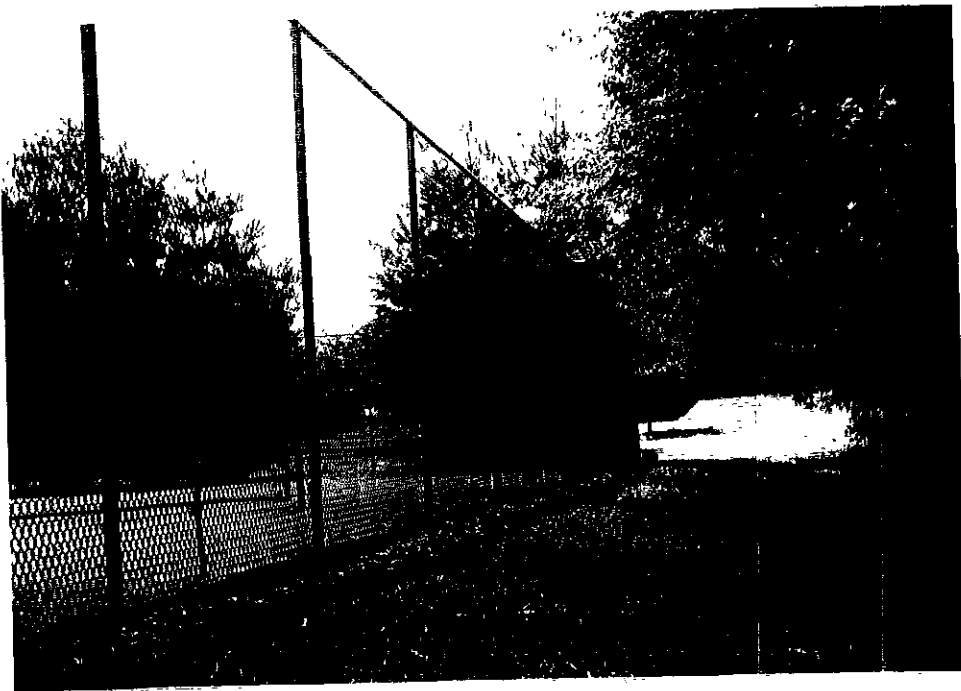
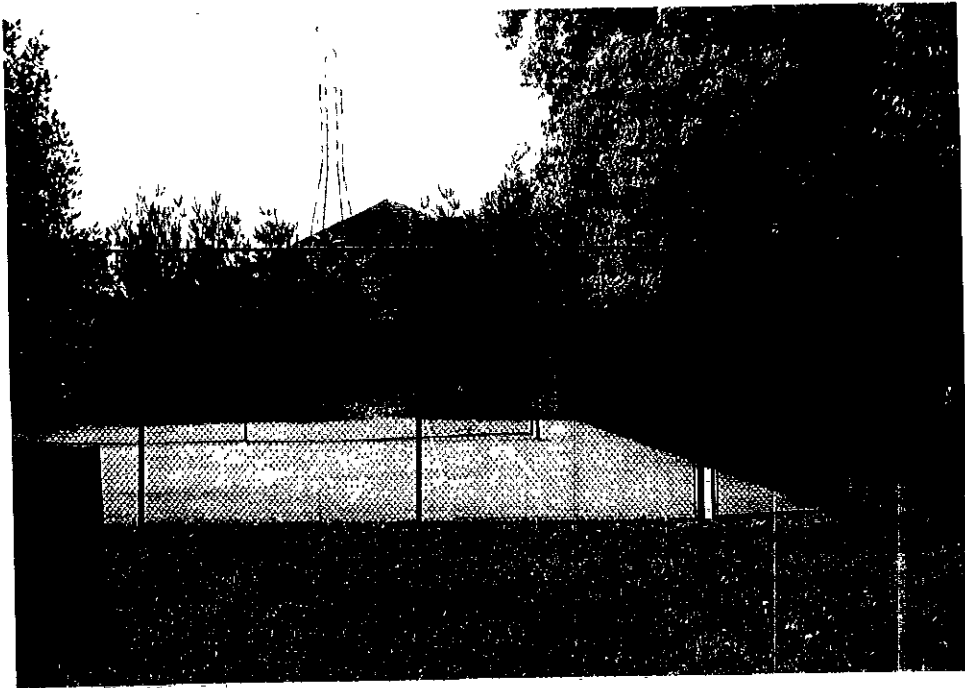


MICROFILMED

95-106-A

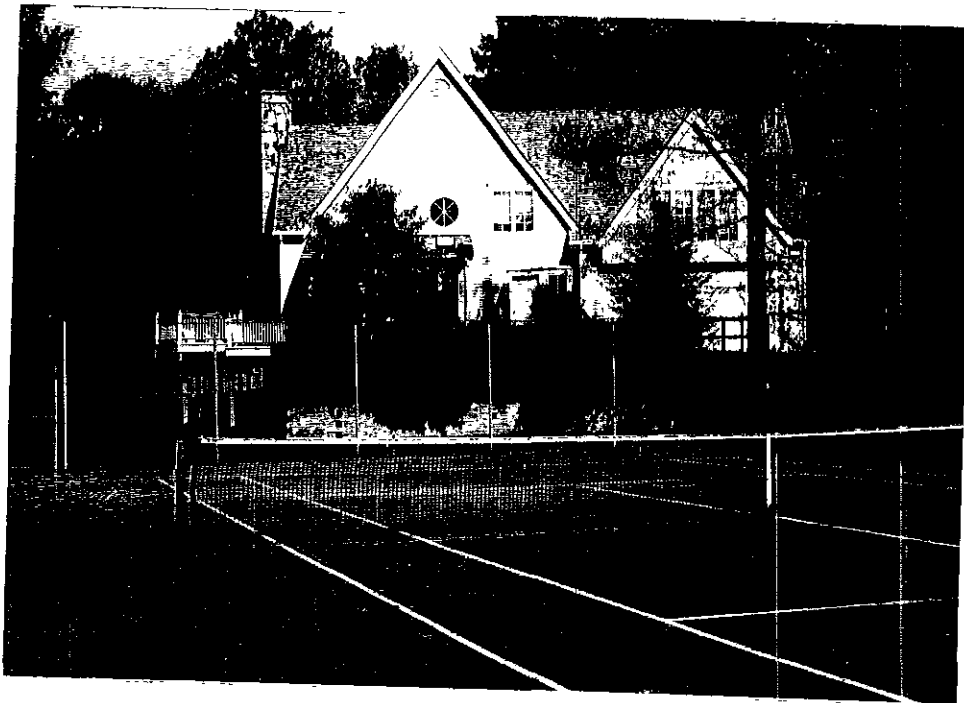
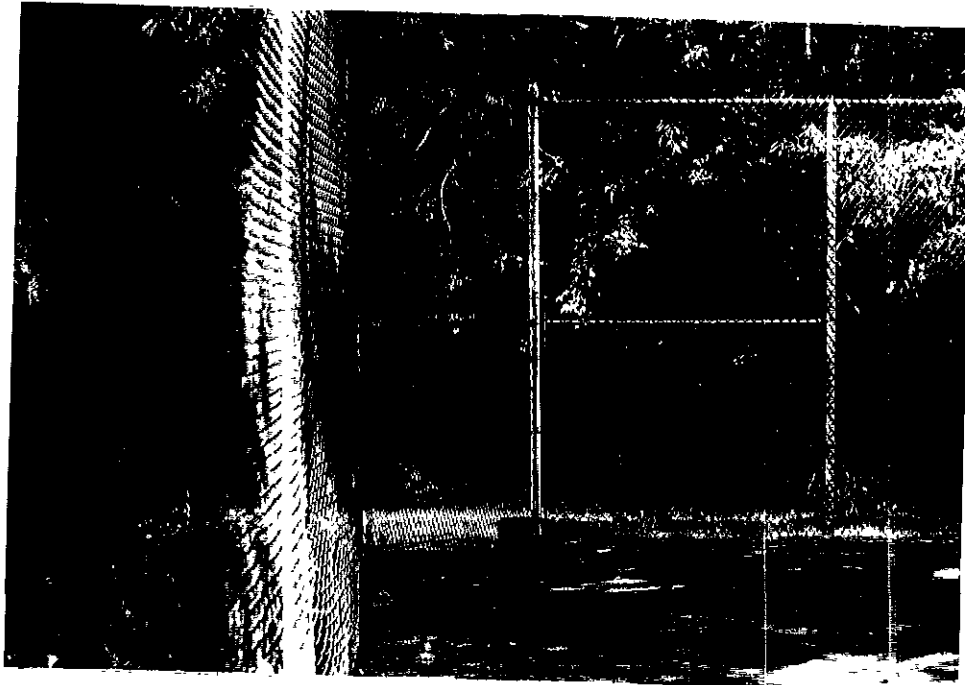


MICROFILMED

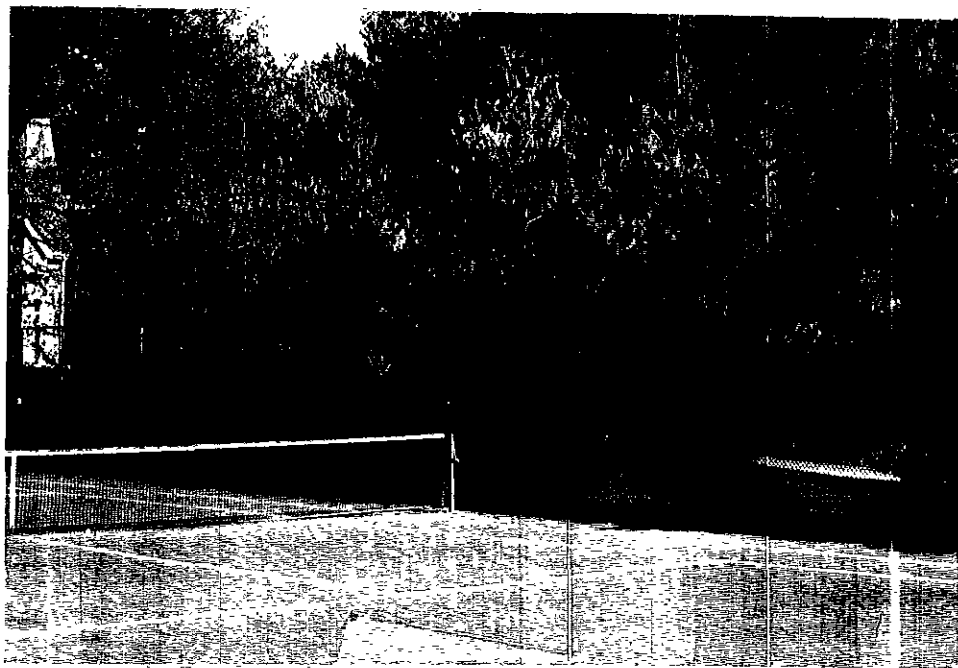


MICROFILMED

95-106-A



MICROFILMED



MICROFILMED



MICROFILMED

PETITIONER'S EXHIBITS



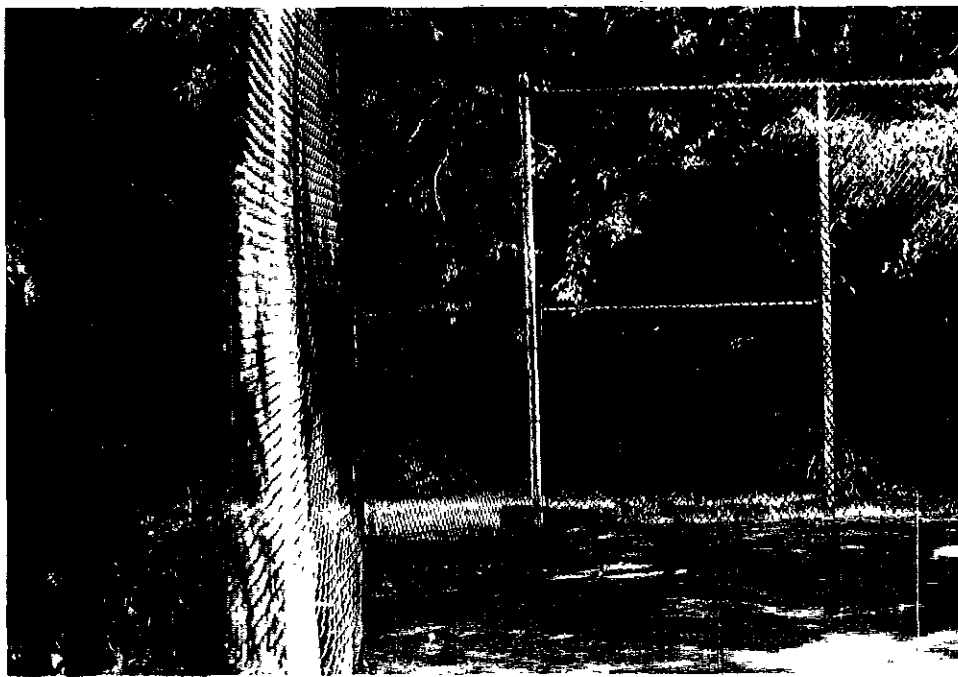
2A



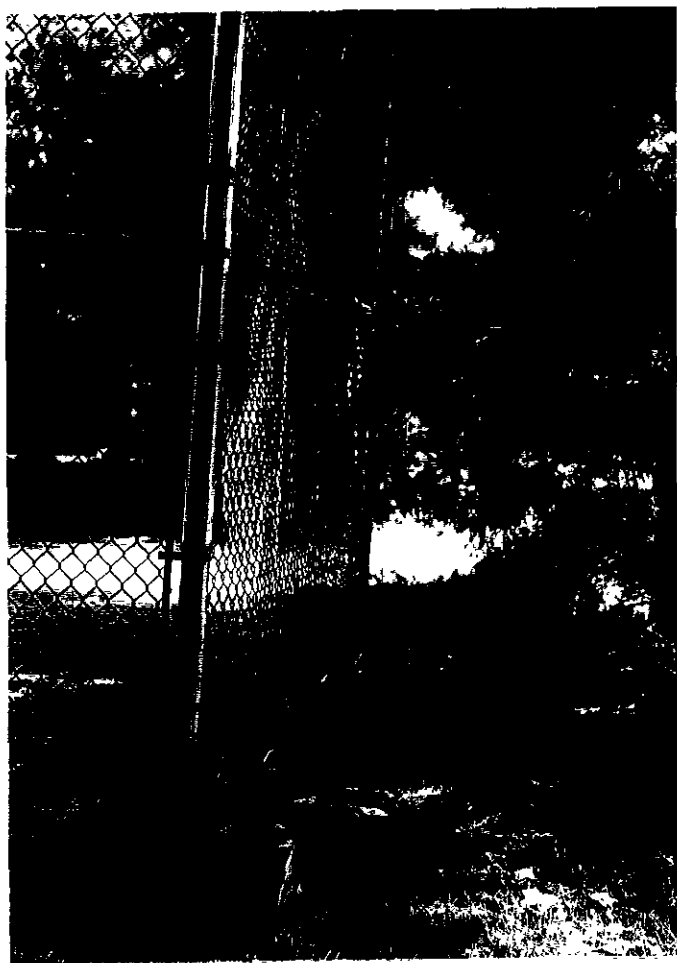
2B



2C



3A

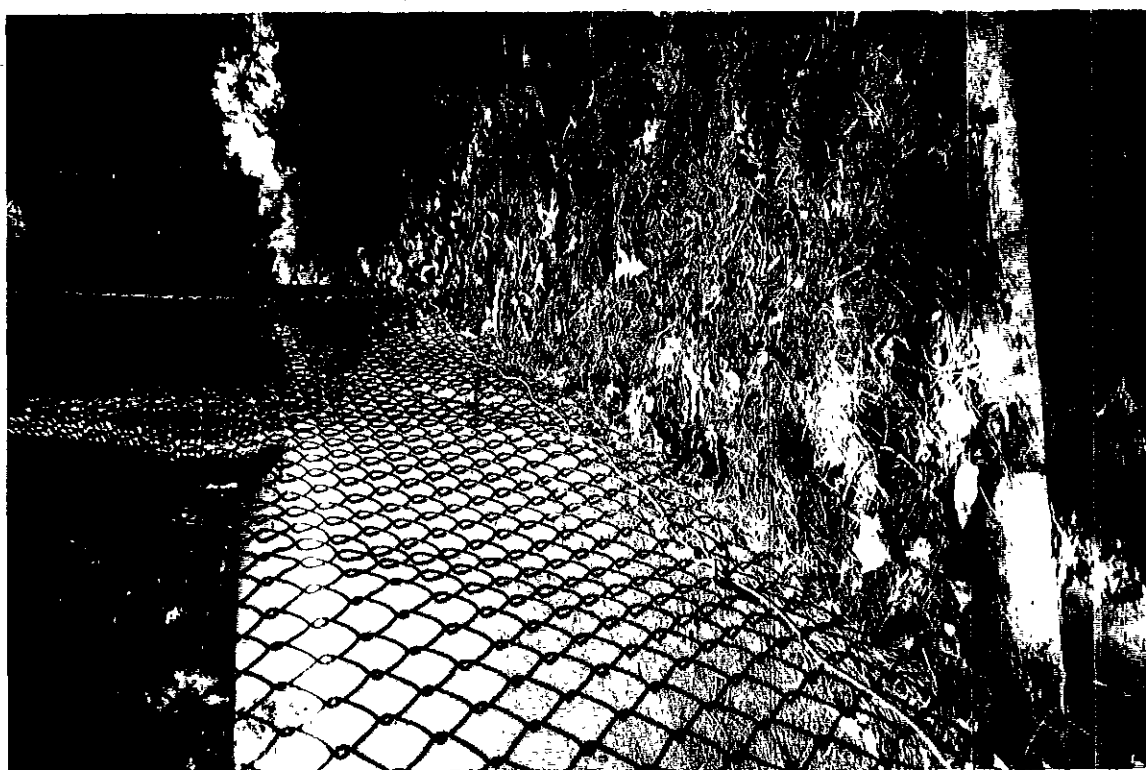


3B



PETITIONER'S
EXHIBITS

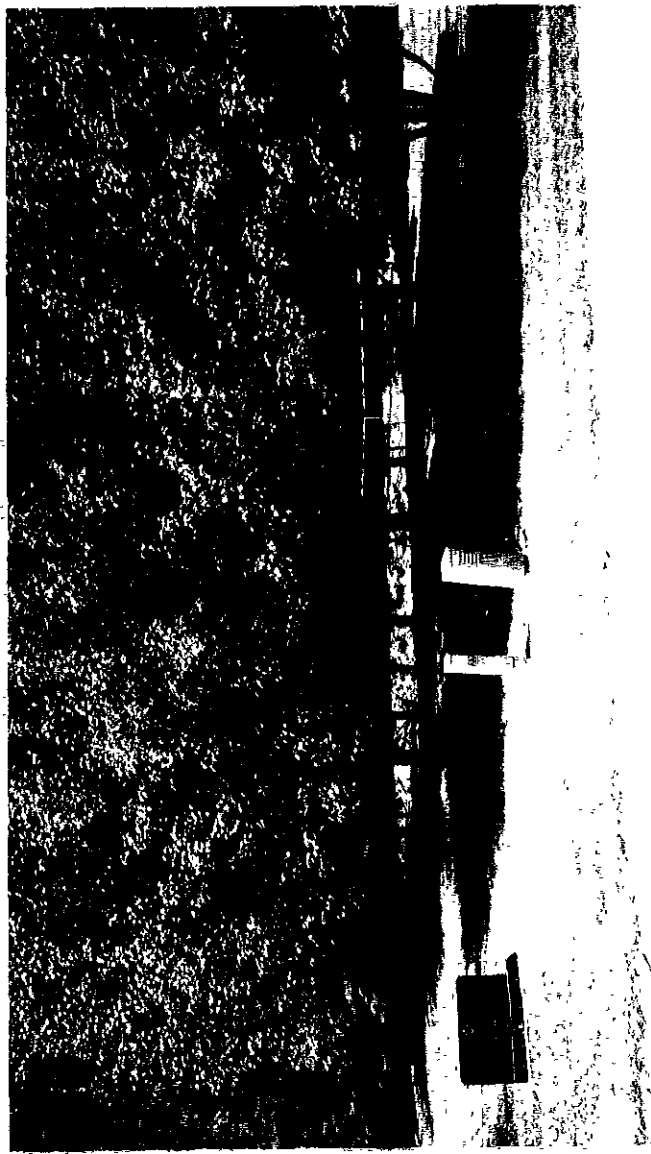
4A



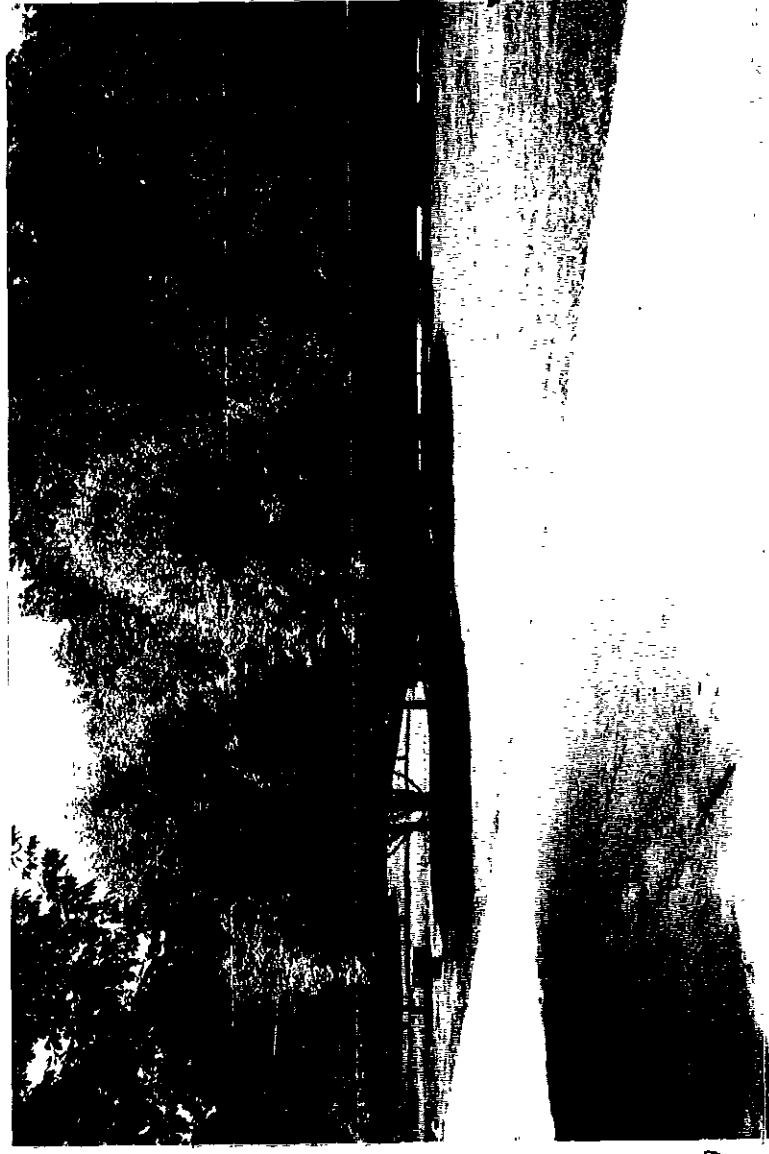
4B



4C



4F



4G



4D



4E

IN RE: PETITION FOR ADMIN. VARIANCE * BEFORE THE
NW/end of Highfield Court, 2,342'
N of the c/l of Pot Spring Road * ZONING COMMISSIONER
(22 Highfield Court)
8th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District * Case No. 95-106-A
J. Stephen Cunat, M.D.
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Administrative Variance for that property known as 22 Highfield Court, located in the vicinity of the Loch Raven Reservoir in northern Baltimore County. The Petition was filed by the owner of the property, J. Stephen Cunat, M.D. The Petitioner seeks relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 0 feet in lieu of the required 2.5 feet for an existing tennis court, and to amend the relief granted in prior zoning Case Nos. 87-307-A, 88-277-A, and 88-327-SPH, accordingly. The subject property and relief sought are more particularly described on the site plan submitted and marked into evidence as Petitioner's Exhibit 1.

As noted above, this matter was filed through the administrative variance procedure, pursuant to Section 26-127 of the Baltimore County Code. Therein, the Zoning Commissioner is authorized to grant variances for residential properties without a public hearing, under certain circumstances. However, at the request of the adjoining property owner, Dr. Shashi Desai, the matter was scheduled for a public hearing to determine the appropriateness of the relief requested.

Appearing at the hearing on behalf of the Petition were Dr. Stephen Cunat, property owner, David Martin, Registered Landscape Architect,

COPIES DESTROYED
10/21/64
HJH
JOP

MICROFILMED

and Robert A. Hoffman, Esquire, attorney for the Petitioner. Appearing as a Protestant in the matter was Dr. Desai, who requested the public hearing.

Testimony and evidence offered revealed that the subject property consists of 3.105 acres, more or less, zoned R.C. 4 and is improved with a one-story frame dwelling and asphalt tennis court, which is the subject of this hearing. The property is located on a panhandle drive in the community known as Overlook in Cockeysville. As the photographs submitted show, this is an upper-class community of substantially sized dwellings on large lots. A review of the case file reveals that this property and the construction of the subject tennis court have an active zoning history. This property was the subject of prior Case No. 87-307-A in which then Zoning Commissioner Arnold Jablon, granted a variance to permit the tennis court to be located in the side yard in lieu of the required rear yard with a side yard setback of 15 feet in lieu of the required 50 feet on January 21, 1987. The relief granted was subject to certain restrictions, one of which did not permit lighting of the tennis courts for night play, and another which required that the tennis courts be no closer than 15 feet from the property line.

Apparently the prior owners of the property, Louis J. Rubin and Joan M. Rubin, had the tennis courts installed. Unfortunately, however, either by intent or inadvertence, the tennis court was, in fact, constructed closer to the property line than allowed by Mr. Jablon's opinion. A second Petition was filed in Case No. 88-277-A, in which additional variance relief was requested to diminish the side yard setback required to 5 feet; however, before this Petition was considered, same was dismissed by the Petitioner in open hearing on February 22, 1988. A third Petition was filed under Case No. 88-327-SPH wherein special hearing relief was sought

ORDER RECEIVED FOR FILING

Date

By

MICROFILMED

to approve the removal of Restriction No. 3 in Mr. Jablon's Order of January 21, 1987, to permit the tennis courts and the surrounding fencing to be closer to the south property line than 15 feet. The Petition did not specifically identify any setback distance which would be maintained. That Case was heard and considered by Ann M. Nastarowicz, then Deputy Zoning Commissioner, who, by Order dated February 25, 1988, granted the requested relief and removed Restriction No. 3 from the prior Order. The effect of her Order was to allow the tennis court and surrounding fence to be closer to the property line than 15 feet. Moreover, as a restriction, she required that the site be landscaped in accordance with the Baltimore County Landscape Manual. It is to be noted that this Petition was also filed by Mr. & Mrs. Rubin and that Ms. Nastarowicz' opinion references the fact that Dr. Desai appeared and testified at that hearing.

As to the instant case, Dr. Cumat and his family apparently acquired the property in August, 1993. Testimony proffered on behalf of the Petitioner was that Dr. Cumat, during preparations for settlement on the subject property, discovered that a portion of the tennis court was, in fact, located on Dr. Desai's property. Indeed, the site plan submitted reflects that a small 2' x 8' sliver of the court extends onto Dr. Desai's property. As I noted at the hearing, the relief granted by Deputy Zoning Commissioner Nastarowicz does not allow the presence of the tennis court on the adjoining property; rather, she permits same to be closer to the property line than 15 feet, so long as landscaping is provided. It is also clear that certain of this landscaping is on the Desai property.

In order to remedy this problem, a portion of the fence surrounding the court has been relocated. The photographs and site plan submitted clearly show that the corner of the court which extends onto the Desai

property has been modified so as to observe the property line. The base asphalt of the court remains on the Desai property and Dr. Cunat recognizes that Dr. Desai has every right to remove the small sliver of the court that crosses his property line. Dr. Cunat, however, requests relief to legitimize existing conditions, particularly the relocation of the fence.

Based upon the testimony and evidence presented, it is clear that the Petition for Administrative Variance should be granted. A relocation of the tennis court at this time would be problematic and illogical. Moreover, I am persuaded that the location of the court is not detrimental to the surrounding locale, including the Desai property. Thus, I shall approve the variance requested in accordance with the site plan marked as Petitioner's Exhibit 1.

Notwithstanding the granting of this variance, it is important to note that same does not, and cannot, constitute any form of permission for Dr. Cunat to extend the court across the property line. The relief granted herein merely legitimizes an existing condition and allows the court and fence surrounding same to come up to the property line, but clearly does not authorize the crossing of same into the Desai property. Moreover, if Dr. Desai desires, he may remove that small sliver of the court which extends onto his property. In fact, the Petitioner expressed a willingness to do this at his expense, if requested to do so by his neighbor. Furthermore, Dr. Desai may remove the trees which buffer the tennis court from his property. This would seemingly be illogical in that they provide a screening for the benefit of the Desai property. However, in that several of the buffering trees are on his lot, Dr. Desai may remove them if he so desires.

RECEIVED FOR FILING

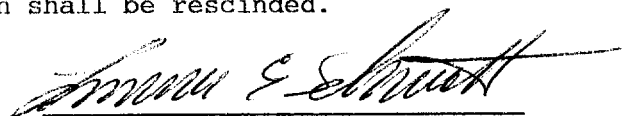
Date

By

Pursuant to the advertising and posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the variance relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of December, 1994 that the Petition for Administrative Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 0 feet in lieu of the required 2.5 feet for an existing tennis court, and to amend the relief granted in prior zoning Case Nos. 87-307-A, 88-277-A, and 88-327-SPH, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

IES:bjs

ORDER RECEIVED FOR FILING
Date 12/21/94
By [Signature]

C 95-10817

1

J. STEPHEN CUNAT, M.D. * BEFORE THE
FOR VARIANCE ON PROPERTY * COUNTY BOARD OF APPEALS
LOCATED ON THE NORTHWEST * OF
END OF HIGHFIELD COURT, * BALTIMORE COUNTY
2,342 FT NORTH OF THE CENTER * Case No. 95-106-A
LINE OF POT SPRING ROAD * September 19, 1995
(22 Highfield Court) *
8th Election District *
3rd Councilmanic District *

* * * * *

The above-entitled matter came on for hearing
before the Baltimore County Board of Appeals at the Old
Courthouse, 400 Washington Avenue, Towson, Maryland 21204
at 10 o'clock a.m., September 19, 1995.

* * * * *

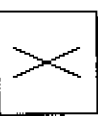
ORIGINAL

Reported by:

C.E. Peatt

Box 364
MICROFILMED

Plat to accompany Petition for Zoning



Variance



Special Hearing

PROPERTY ADDRESS: 22 HIGHFIELD COURT

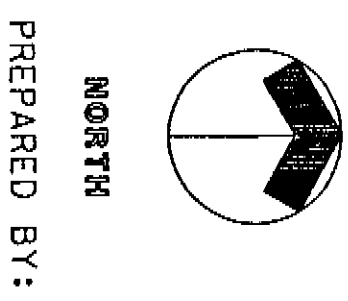
Subdivision name: OVERLOOK

Plat book# 51, folio# 72, section# PLAT 2

OWNER: DR. JOHN STEPHEN CUNAT, M.D.

PREVIOUS ZONING CASES
CASE NO. 87-307-A
CASE NO. 88-327-SPH
CASE NO. 88-277-A

J. H. HAMMERMAN, II
5063/349
R.C. -4 ZONE



NORTH

PREPARED BY:

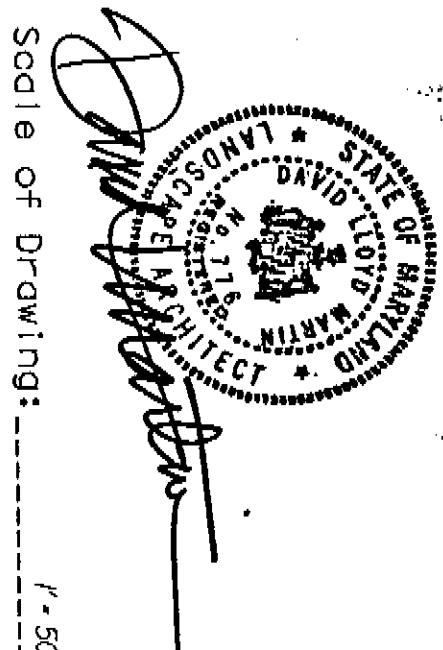
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.

CIVIL ENGINEERS & LAND SURVEYORS

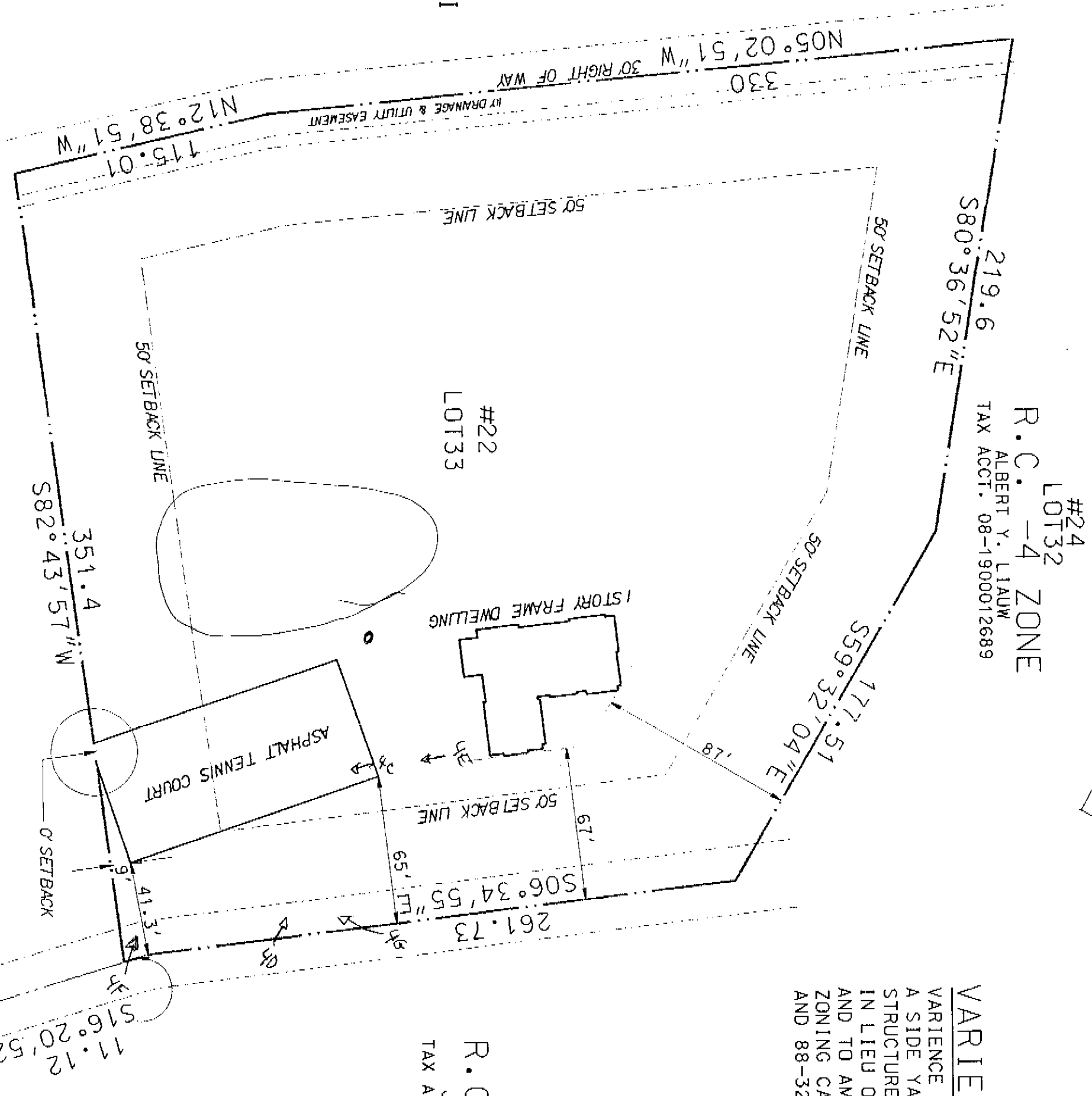


658 KENILWORTH DRIVE, SUITE 100
TOWSON, MARYLAND 21204
(410) 825-8120

DATE: SEPT. 9, 1994



Scale of Drawing: 1" = 50'



VARIANCE REQUESTED:
VARIANCE OF SECTION 400.1 TO PERMIT A SIDE YARD SETBACK OF AN ACCESSORY STRUCTURE (TENNIS COURT) OF 0 FEET IN LIEU OF THE REQUIRED 2.5 FEET AND TO AMEND THE RELIEF GRANTED IN ZONING CASE NUMBERS 87-307-A, 88-277-A, AND 88-327-SPH.

#23
LOT 28
R.C. -4 ZONE
JEAN C. ALANO
TAX ACCT. 08-1900012685

J. Stephen Cunat, M.D. 95-105-A
Taken for duplication to the County Office Building:
Petitioner's Exhibit #1
Barbara Ormrod 9/18/95
Returned: 9/18-95 *an*

MICROFILMED

THIS MAP WAS PREPARED BY A FIRM OF ENGINEERS AND SURVEYORS REGISTERED IN THE STATE OF MARYLAND AND IS IN ACCORDANCE WITH THE PROVISIONS OF THE MARYLAND PROFESSIONAL ENGINEERS AND SURVEYORS ACT OF 1966.

VICINITY MAP
SCALE 1" = 1000'

LOCATION INFORMATION

COUNCILMANIC DISTRICT 3rd
ELECTION DISTRICT 8th
1" = 200' SCALE MAP # N.E. 17-A
LOT SIZE: 3.105 ACREAGE ±135,253 SQUARE FEET

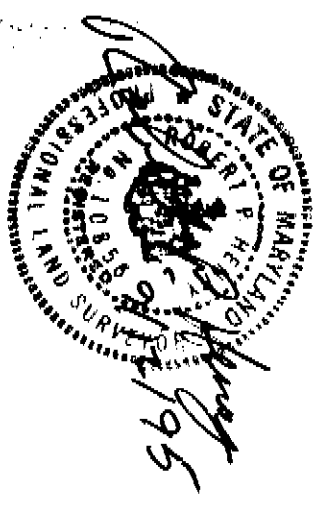
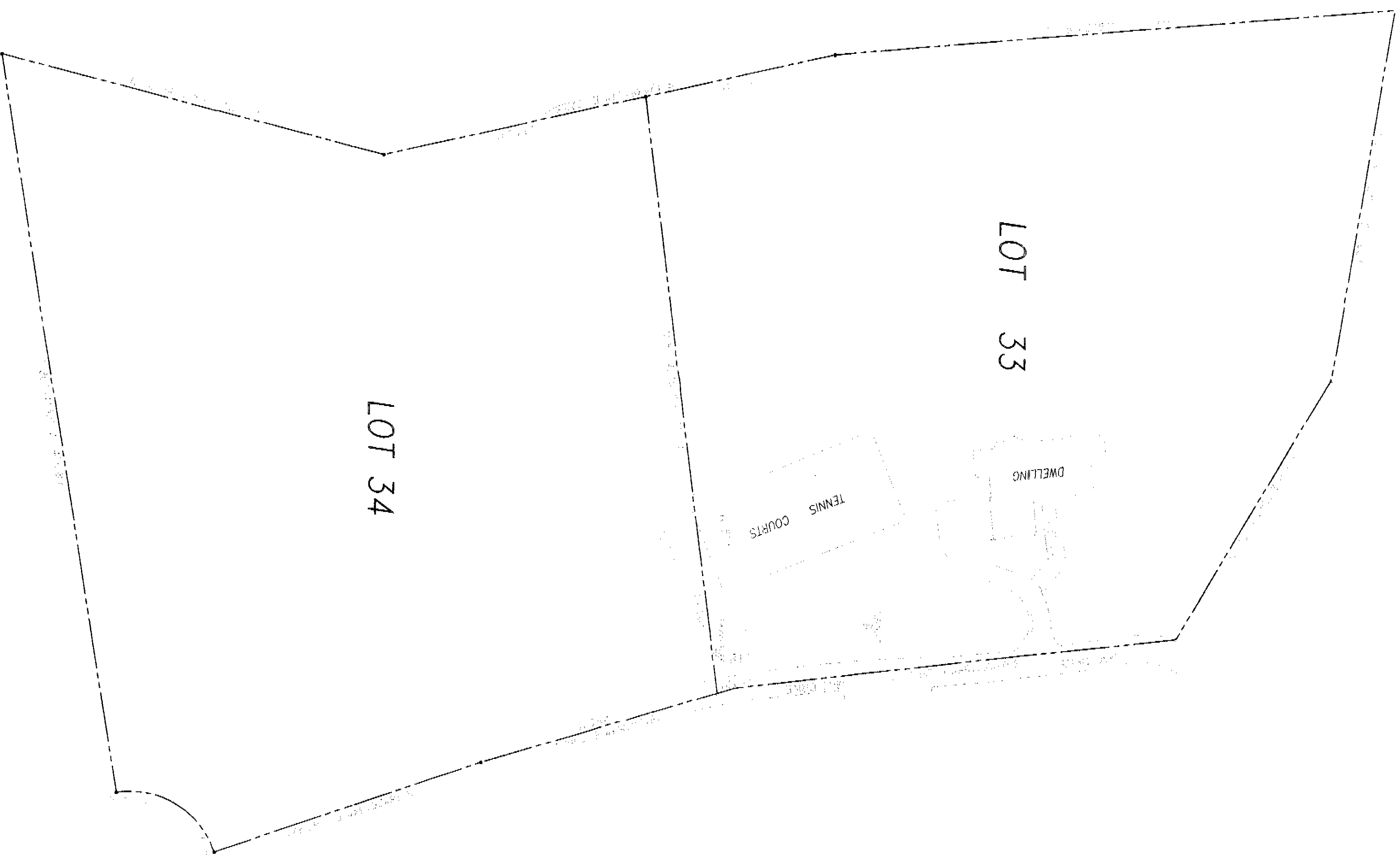
ZONING OFFICE USE ONLY 1

Reviewed by Item # Case no.

Pat x 1

9/18/95

Petitioner's
#6



PLAT SHOWING TENNIS COURT ENCROACHMENT

CUNAT RESIDENCE

GWS
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
CIVIL ENGINEERS & LAND SURVEYORS
1000 W. 10TH STREET, SUITE 100
ANNAPOLIS, MD 21403
(410) 291-1100

BECKMAN & COMPANY, INC.
1000 W. 10TH STREET, SUITE 100
ANNAPOLIS, MD 21403
DATE: SEPTEMBER 14, 1995
MICROFILMED

N 66000
E 6000

N 66000
E 4800

OWNER: CLARE M. ROBERTS & SONS, INC.
FOR THE CLARE M. ROBERTS & SONS, INC.
DEVELOPER: OVERLOOK, INC.
10 BOX HILL AVENUE, MD. 2131
301-461-0800

N 67000
E 6000

ENG. EER:
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES INCORPORATED
TOWSON, MARYLAND
301-723-8120

ZONE RC-4

ZONE DR-3.5

ZONE RC-4

Mayor & City Council of Baltimore City

Mayor & City Council of
Baltimore City

ZONE R.C. 4

AMENDED CRG PLAN

"OVERLOOK"

DISTRICT B-C3 BALTIMORE
SCALE: 1" = 100' JULY 1985

REVISIONS
1. 10/1/85
2. 10/1/85
3. 10/1/85
4. 10/1/85
5. 10/1/85
6. 10/1/85
7. 10/1/85
8. 10/1/85
9. 10/1/85
10. 10/1/85
11. 10/1/85
12. 10/1/85
13. 10/1/85
14. 10/1/85
15. 10/1/85
16. 10/1/85
17. 10/1/85
18. 10/1/85
19. 10/1/85
20. 10/1/85
21. 10/1/85
22. 10/1/85
23. 10/1/85
24. 10/1/85
25. 10/1/85
26. 10/1/85
27. 10/1/85
28. 10/1/85
29. 10/1/85
30. 10/1/85
31. 10/1/85
32. 10/1/85
33. 10/1/85
34. 10/1/85
35. 10/1/85
36. 10/1/85
37. 10/1/85
38. 10/1/85
39. 10/1/85
40. 10/1/85
41. 10/1/85
42. 10/1/85
43. 10/1/85
44. 10/1/85
45. 10/1/85
46. 10/1/85
47. 10/1/85
48. 10/1/85
49. 10/1/85
50. 10/1/85
51. 10/1/85
52. 10/1/85
53. 10/1/85
54. 10/1/85
55. 10/1/85
56. 10/1/85
57. 10/1/85
58. 10/1/85
59. 10/1/85
60. 10/1/85
61. 10/1/85
62. 10/1/85
63. 10/1/85
64. 10/1/85
65. 10/1/85
66. 10/1/85
67. 10/1/85
68. 10/1/85
69. 10/1/85
70. 10/1/85
71. 10/1/85
72. 10/1/85
73. 10/1/85
74. 10/1/85
75. 10/1/85
76. 10/1/85
77. 10/1/85
78. 10/1/85
79. 10/1/85
80. 10/1/85
81. 10/1/85
82. 10/1/85
83. 10/1/85
84. 10/1/85
85. 10/1/85
86. 10/1/85
87. 10/1/85
88. 10/1/85
89. 10/1/85
90. 10/1/85
91. 10/1/85
92. 10/1/85
93. 10/1/85
94. 10/1/85
95. 10/1/85
96. 10/1/85
97. 10/1/85
98. 10/1/85
99. 10/1/85
100. 10/1/85

MICROFILMED

SOIL TYPES & LIMITATIONS			
AREA	TYPE	S.F. DRNG. w/ Basmt.	Seismic Filter Fields
10.2	GCB2	Slight	Slight
10.3	GCB2	Moderate	Moderate
10.4	GCB2	Moderate	Moderate
10.5	GCB2	Moderate	Moderate
10.6	GCB2	Moderate	Moderate
10.7	GCB2	Moderate	Moderate
10.8	GCB2	Moderate	Moderate
10.9	GCB2	Moderate	Moderate
11.0	GCB2	Moderate	Moderate
11.1	GCB2	Moderate	Moderate
11.2	GCB2	Moderate	Moderate
11.3	GCB2	Moderate	Moderate
11.4	GCB2	Moderate	Moderate
11.5	GCB2	Moderate	Moderate
11.6	GCB2	Moderate	Moderate
11.7	GCB2	Moderate	Moderate
11.8	GCB2	Moderate	Moderate
11.9	GCB2	Moderate	Moderate
12.0	GCB2	Moderate	Moderate
12.1	GCB2	Moderate	Moderate
12.2	GCB2	Moderate	Moderate
12.3	GCB2	Moderate	Moderate
12.4	GCB2	Moderate	Moderate
12.5	GCB2	Moderate	Moderate
12.6	GCB2	Moderate	Moderate
12.7	GCB2	Moderate	Moderate
12.8	GCB2	Moderate	Moderate
12.9	GCB2	Moderate	Moderate
13.0	GCB2	Moderate	Moderate
13.1	GCB2	Moderate	Moderate
13.2	GCB2	Moderate	Moderate
13.3	GCB2	Moderate	Moderate
13.4	GCB2	Moderate	Moderate
13.5	GCB2	Moderate	Moderate
13.6	GCB2	Moderate	Moderate
13.7	GCB2	Moderate	Moderate
13.8	GCB2	Moderate	Moderate
13.9	GCB2	Moderate	Moderate
14.0	GCB2	Moderate	Moderate
14.1	GCB2	Moderate	Moderate
14.2	GCB2	Moderate	Moderate
14.3	GCB2	Moderate	Moderate
14.4	GCB2	Moderate	Moderate
14.5	GCB2	Moderate	Moderate
14.6	GCB2	Moderate	Moderate
14.7	GCB2	Moderate	Moderate
14.8	GCB2	Moderate	Moderate
14.9	GCB2	Moderate	Moderate
15.0	GCB2	Moderate	Moderate
15.1	GCB2	Moderate	Moderate
15.2	GCB2	Moderate	Moderate
15.3	GCB2	Moderate	Moderate
15.4	GCB2	Moderate	Moderate
15.5	GCB2	Moderate	Moderate
15.6	GCB2	Moderate	Moderate
15.7	GCB2	Moderate	Moderate
15.8	GCB2	Moderate	Moderate
15.9	GCB2	Moderate	Moderate
16.0	GCB2	Moderate	Moderate
16.1	GCB2	Moderate	Moderate
16.2	GCB2	Moderate	Moderate
16.3	GCB2	Moderate	Moderate
16.4	GCB2	Moderate	Moderate
16.5	GCB2	Moderate	Moderate
16.6	GCB2	Moderate	Moderate
16.7	GCB2	Moderate	Moderate
16.8	GCB2	Moderate	Moderate
16.9	GCB2	Moderate	Moderate
17.0	GCB2	Moderate	Moderate
17.1	GCB2	Moderate	Moderate
17.2	GCB2	Moderate	Moderate
17.3	GCB2	Moderate	Moderate
17.4	GCB2	Moderate	Moderate
17.5	GCB2	Moderate	Moderate
17.6	GCB2	Moderate	Moderate
17.7	GCB2	Moderate	Moderate
17.8	GCB2	Moderate	Moderate
17.9	GCB2	Moderate	Moderate
18.0	GCB2	Moderate	Moderate
18.1	GCB2	Moderate	Moderate
18.2	GCB2	Moderate	Moderate
18.3	GCB2	Moderate	Moderate
18.4	GCB2	Moderate	Moderate
18.5	GCB2	Moderate	Moderate
18.6	GCB2	Moderate	Moderate
18.7	GCB2	Moderate	Moderate
18.8	GCB2	Moderate	Moderate
18.9	GCB2	Moderate	Moderate
19.0	GCB2	Moderate	Moderate
19.1	GCB2	Moderate	Moderate
19.2	GCB2	Moderate	Moderate
19.3	GCB2	Moderate	Moderate
19.4	GCB2	Moderate	Moderate
19.5	GCB2	Moderate	Moderate
19.6	GCB2	Moderate	Moderate
19.7	GCB2	Moderate	Moderate
19.8	GCB2	Moderate	Moderate
19.9	GCB2	Moderate	Moderate
20.0	GCB2	Moderate	Moderate

SHEET 2 of 2

Ref: #7A

Lot #9

RECEIVED
MAY 5 1962
ZIMMING OFFICE

[illegible][illegible]

Building Department
Office of Planning and Zoning
County Office Building
Columbus, Georgia 31906

11-23-82

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

RECEIVED
JUN 19 1982

The Bureau of Traffic Engineering has to comment for item number
100, 110, 120, 130, 140, 150, and 160

Very truly yours,
Richard S. Friedman
Traffic Engineer, Associate II

Shirley M. Brown
Bureau of Traffic Engineering

Shirley M. Brown
Bureau of Traffic Engineering

Re: Bureau's
6/14/82

Copy your Bureau report

Re: Bureau's
6/14/82